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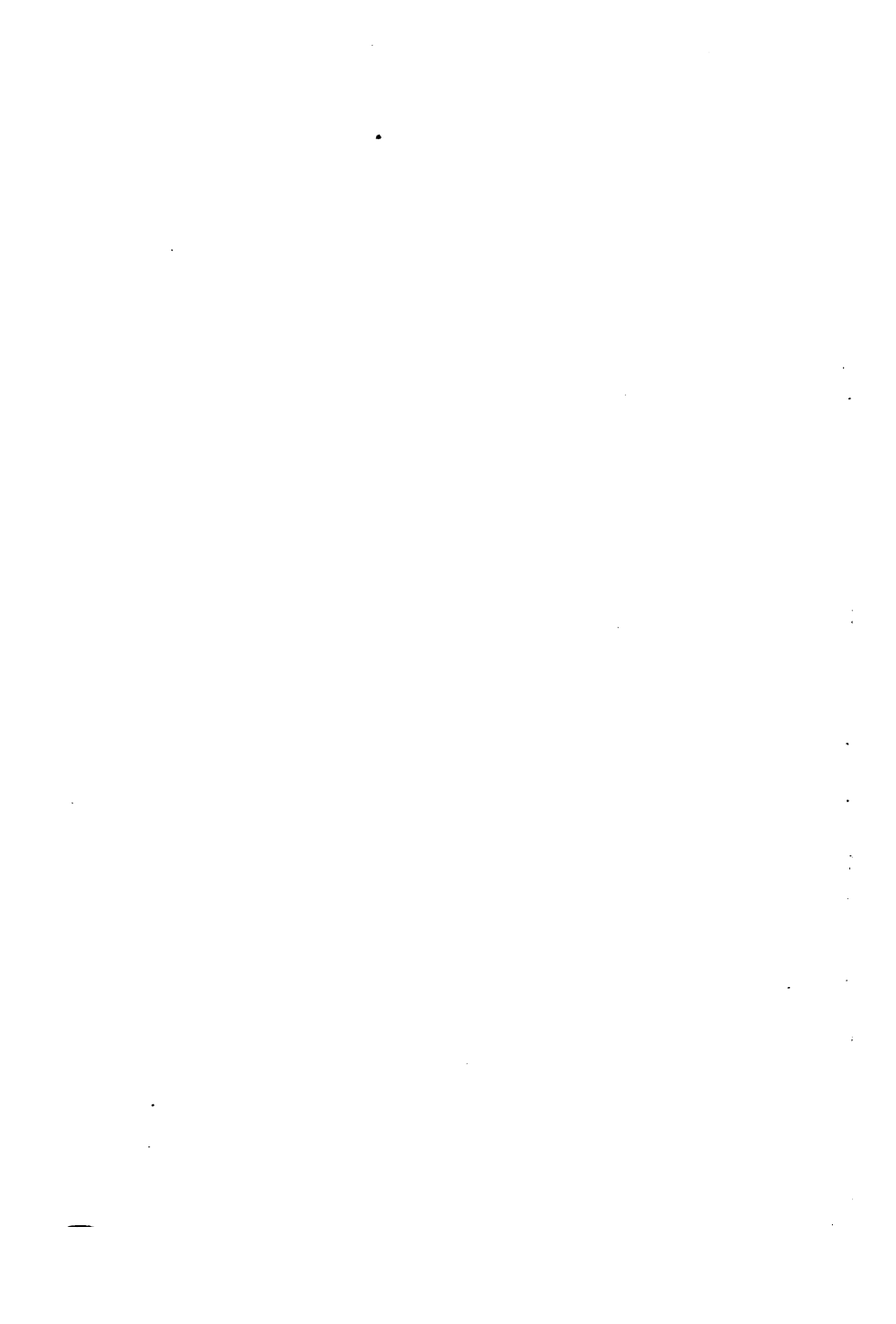


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**THE MARRIED WOMEN'S PROPERTY
ACT, 1882.**



THE
Married Women's Property
ACT, 1882.

WITH
INTRODUCTION, NOTES, APPENDIX OF STATUTES
AND EXHAUSTIVE INDEX.

By ALEX. MACMORRAN, M.A.,

*Of the Middle Temple, Barrister-at-Law,
One of the Editors of the Justice of the Peace.*

LONDON
SHAW AND SONS, FETTER LANE AND CRANE COURT,
Printers and Publishers.
1888.

LONDON: PRINTED BY SHAW AND SONS, FETTER LANE, E.C.

PREFACE.

THE present Work is intended to explain and illustrate the Married Women's Property Act, 1882. The plan which has been adopted to carry out this intention has been to annotate each section of the Act, so as to show the extent and nature of the changes which it effects in the law relating to separate property and in the respective liabilities of husband and wife. For that purpose the notes to each section have been prepared with a view to showing as far as possible, having regard to the space at disposal, the state of the law previous to 1870, the changes introduced by the Acts of 1870 and 1874, and the alterations effected by the recent Act. References have been given to text books dealing with special

subjects where these are only incidentally presented for discussion. All recent decisions of importance have been mentioned, and their bearing upon the law as altered by the new Act indicated.

A. M.

TEMPLE,

December 1st, 1882.

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INTRODUCTION.

IT was originally intended as part of the plan of this work to state in some detail the interest which a husband formerly took in the property of his wife, whether consisting of realty, chattels real, personalty in possession or in action or reversionary interests. It was found, however, that such a scheme would have occupied a larger space than the limits of this little work would have permitted, unless it had been carried out in a very cursory manner. And as the law previous to 1870 has become to a large extent of historical value only, or at least does not throw much light on the interpretation of the law as altered by recent statutes, it has been considered that the most fitting introduction to a work on the latest Act would consist of a short account of the Acts which it supersedes, showing in what respects it differs from, alters, or extends the operation of the older Acts.

Before proceeding to carry out this plan it may be permitted to interpolate here a passage from the speech of the late recorder of London, Mr. Russell Gurney, Q.C., M.P., in moving the second reading of the Married Women's Property Act of 1870, showing as it does in a concise form the state of the law up to that time, and the object of the proposed legislation.

“It was now proposed,” he said, “that for the first time in our history, the property of one half of the married people of this country should receive the protection of the law. Up to this time the property of a wife had had no protection from the law, or rather, he should say, in the eye of the law it had no existence. From the moment of her marriage the wife, in fact, possessed no property; whatever she might up to that time have possessed by the very act of marriage passed from her, and any gift or bequest made to her became at once the property of the husband. Nay, even that which one might suppose to be her inalienable right, the fruit of her mental or bodily toil, was denied her. She might be gifted with powers which enabled her to earn an ample fortune, but the moment it was earned it was not hers, it was her husband’s! In fact, from the time of her entering into what was described as an honourable estate, the law pronounced her unfit to hold any property whatever. . . . This was the law of England—a law so unequal and so unjust that it could never have lasted to the present day had it not been for the means of evading it sanctioned by the Courts of Equity. The common sense and the right feeling of mankind had revolted against it, and had, as far as they could, worked out a partial remedy; and the strange thing was that while the courts on one side of Westminster Hall upheld the law in all its stringency, the courts on the other side had striven hard, and to some

extent successfully, to evade and defeat it. The chief mode of defeating it had been by means of marriage settlements. Scarcely a case occurred in which, on the marriage of a woman of fortune, she did not deprive herself of the control of her property, and vest it in trustees for her separate use. The common law ignored these trusts, but they were sanctioned and encouraged in equity. But the Courts of Equity had gone much further than this. They had, indeed, proceeded gradually. They had recognized the wife's separate estate in the hands of trustees; the next step was that if property were bequeathed to a wife during coverture, and the husband could not obtain possession of it except through the intervention of equity, the Court would refuse to interfere unless he recognized the wife's right to have a portion of the property settled upon her. The next step taken by the Court of Equity in the interest of married women was to give the wife a settlement upon her application, even where the husband did not require the help of the Court to obtain possession of property coming to her. They had since recognized her right to sue and be sued." (*Hansard*, April 14, 1870).

The Act of 1870 adopted the doctrine of separate estate as it had hitherto existed in equity. It did not expressly declare that thereafter a married woman should be recognized in law as a legal person possessing separate property. It simply declared that certain

property should be her separate property, adding in the case of wages and earnings, under section 1, the words, "independent of any husband to whom she may be married." Beyond declaring, therefore, that certain property should be deemed to be separate property, the Act did not alter the position of a married woman, except in so far as it gave her certain remedies at law in addition to those she would have possessed in equity for the protection of her separate estate. (See per JESSEL, M.R., in *Howard v. The Bank of England*, *post*, p. 14.)

The Act of 1882, on the other hand, changes entirely the legal status of married women. It declares that after it comes into operation on January 1st, 1883, a married woman, whether married before or after the passing of the Act, shall be capable of acquiring, holding, and disposing of property by will or otherwise in all respects as if she were a *feme sole* without the intervention of any trustee (sect. 1, sub-sect. 1). It provides that she shall, if possessed of separate property, be capable of binding herself by contract to the extent of it, and that to a similar extent she shall be liable to sue and be sued in contract or in tort in her own name, without adding her husband as a party to the action (sub-sect. 2). The same section further provides that every such contract shall be deemed to have been entered into with respect to her separate estate until the contrary is shown, thus reversing the presumption which

formerly prevailed in Courts of Equity (sub-sect. 3). Every such contract is to bind her separate estate, whether it is then actually in her possession or is subsequently acquired by her (sub-sect. 4). And if she carries on a separate trade, as she may by virtue of the powers of contracting thus given to her, she is liable to be made a bankrupt (sub-sect. 5). The effect of this section is practically to give to a married woman, having separate property, a legal status apart from her husband. And this status consists not merely in her being recognized as she formerly was in Courts of Equity, which protected her separate property, gave her certain rights in respect of it, and enabled her to contract with reference to it. For she is now to be regarded as a legal person, freed from all the disabilities formerly consequent upon her coverture, able to act and liable in respect of it. Section 2 enables a woman married after January 1st, 1883, to have, hold, and dispose of all real and separate estate belonging to her at the time of her marriage, or which shall be acquired by or devolve upon her after marriage, including any wages, earnings, money, and property gained or acquired by her in any trade, employment, or occupation she may carry on separately from her husband, or by the exercise of any literary, artistic, or scientific skill. This section replaces sections 1, 7, and 8 of the Act of 1870, with which it may usefully be compared. Section 1 of the earlier Act related to the wages and earnings of a

married woman, and was expressed in much the same terms as those of the Act of 1882. It provided that they should be deemed and be taken to be property held and settled to her separate use, independent of any husband to whom she might be married, and that her receipts alone should be a good discharge for such wages and earnings. This last clause is now quite unnecessary, seeing that by the Act a married woman is enabled to hold such property as a *feme sole*. Except in this respect, however, the Act of 1882 makes no change in section 1 of the Act of 1870. Section 7 provided that "where any woman married after the passing of this Act shall during her marriage become entitled to any personal property as next of kin, or one of the next of kin of an intestate, or to any sum of money not exceeding £200 under any deed or will, such property shall, subject and without prejudice to the trusts of any settlement affecting the same, belong to the woman for her separate use, and her receipts alone shall be a good discharge for the same." It is unnecessary to point out the limitations of this section, as these can be collected by the most casual reader. The new Act contains no such limitation, for it simply renders all property separate property which belongs to a woman at the time of her marriage, or is afterwards acquired by or devolves upon her in any manner whatever. Section 8 provided as follows: "where any freehold, copyhold, or

customary hold property, shall descend upon any woman married after the passing of this Act, as heiress or co-heiress of an intestate, the rents and profits of such property shall, subject and without prejudice to the trusts of any settlement affecting the same, belong to such woman for her separate use, and her receipts alone shall be a good discharge for the same." It will be seen that this section is very limited in its operation. It applied only to real property descended from an intestate, and from the use of the words "rents and profits," it was left in doubt whether the corpus of the estate was to be deemed separate property. The new Act is much more extensive in its operation, for it renders any real property separate estate if it belongs to the woman at the time of her marriage, or is acquired by her or devolves upon her in any manner whatever. In fact, with regard to any woman married after the Act comes into operation, all her property becomes her separate property, whether it actually belongs to her at the time of her marriage or comes to her afterwards. The importance of this provision can hardly be overestimated. Henceforth it will not be possible for a man who marries without a settlement to deprive his wife absolutely of her property. It will remain her own, and she will have the power at any time to prevent his touching or dealing with it. But it must not be too hastily inferred that settlements are rendered unnecessary by the Act. Such is not the case. When

there is no settlement there can be no restraint upon anticipation, and it will be as desirable as ever to bind the property of a wife and so prevent her conveying or incumbering it at the persuasion or to meet the necessities of her husband.

The Act applies to women married before January 1st, 1883, to a limited extent. It enables them to have, hold, and dispose of all property of whatsoever kind which may come to them after the Act comes into operation. But save to this extent the rights and liabilities of women married before that date are not affected, and it may be useful in a few sentences to state the position of such married persons. With regard to husband and wife married before 1870, the wife can possess as her separate estate only property settled upon her by deed or will, or consisting of gifts from her husband or third persons. Between 1870 and 1883 she might have acquired property by her wages or earnings, but not under sections 7 and 8 of the Act of 1870, for these did not apply to a woman married before that Act. After 1883, of course any property coming to her will be her separate property. Formerly she was entitled merely to an equity to a settlement out of such property. Her husband was entitled, subject to this equity, to all property derived or bequeathed to or earned by her down to the year 1870. After that date her earnings became her own, but his interest in her other property continued as before. On the other

hand he was always liable for her debts and liabilities, whether contracted before or after marriage, and the Act of 1870 did not in any way free him from such liability. Nor does the present Act avail him, for section 12 which renders the wife's estate liable, and section 13 which gives a corresponding advantage to the husband, expressly provides that nothing in these sections shall increase or diminish the respective liabilities of husband and wife married before the commencement of the Act, as to the wife's ante-nuptial liabilities, while as to liabilities contracted during coverture, the husband remains under his common law liability, except to this extent, that his wife's contracts are now to be presumed to be made with respect to her separate property unless the contrary be shown.

The position of persons married after the Act of 1870 is very different. In addition to the means of acquiring separate estate existing independently of the Act, a woman married after that date could acquire separate estate by her wages or earnings, and under sections 7 and 8 already noticed, and the Act gave her certain remedies for the protection and security of her separate estate. But the section of the Act which is of importance to be noticed here is that which absolutely freed the husband from liability for his wife's ante-nuptial debts, and rendered her liable to be sued for them. This continued to be the law until 1874, when the Amending Act was passed, declaring that a husband

should be liable for his wife's ante-nuptial debts as well as for her torts and breaches of contract to the extent of assets received with his wife. The text of this Act is set out in the Appendix, and it is not necessary to set it out here. It applied, however, only to persons married after the 30th July, 1874. As to persons married before that date, but after the 9th August, 1870, the law was simply that the husband was free from liability for his wife's debts contracted before marriage, but not for her torts or liabilities other than debts. Neither of the Acts of 1870 and 1874 affected the liability of the husband for his wife's debts, torts, or breaches of contract during the coverture. That liability remained as before; in fact the position of a married woman was not altered except to the extent of declaring certain property to be separate property, giving the wife certain additional remedies, and freeing the husband from liability for ante-nuptial debts. (See per JESSEL, M.R., in *Howard v. The Bank of England*, *post*, p. 18.)

As already stated, a woman married after January 1st, 1883, will hold as her separate estate everything she may possess at the date of her marriage, or may afterwards acquire, and her power of acquiring is greatly extended, and the Act of 1882 extends to persons married before the Act, so far as regards property acquired by, or devolving upon them after the Act comes into operation. The means by which such property may be acquired after that date, and the effect

of the Act upon the liability of the husband, may best be seen by comparing the provisions of the Acts of 1870 and 1882.

Section 2 of the Act of 1870 declared that deposits in savings banks and annuities granted by the National Debt Commissioners in the name of a married woman were to be deemed her separate property. Section 3 enabled a married woman to apply to the Governors of the Bank of England and Ireland to have any property, not less than £20 in value, standing in her name in the funds transferred or entered as belonging to her to her separate use, such property to be deemed thereupon to be her separate property. Section 4 contained similar provisions as to her interests in shares, debentures, or stock of any joint stock company, and section 5 made a similar provision as to her property in any share, benefit, debenture, right, or claim in or upon the funds of any friendly benefit building or loan society. Each of these sections contained a proviso that if any such property had been obtained by a wife by means of the moneys of her husband without his consent, he might apply, under section 9 of the Act, to have it transferred or paid to him. And section 6 provided that any deposit or interest under the sections already mentioned should, as against the creditors of the husband, be void if made in fraud of such creditors.

The Act of 1882 is much more comprehensive. It applies not merely to the deposits and interests specified

above, but apparently to every possible interest of a similar kind which a woman could possess. Thus section 6 applies not merely to deposits in savings banks, but to deposits in any bank; not merely to annuities granted by the National Debt Commissioners, but to annuities granted by them or any other person; not merely to stock in the funds, but to stock of any bank. It applies also to all shares, stock, debentures, debenture stock, or other interests in any corporation, company, or public body, municipal, commercial, or otherwise, or in any industrial friendly benefit building or loan society.

Section 6 declares that any of such property which may on January 1st, 1883, be standing in the name of a married woman shall be deemed to be her separate property until the contrary be shown. Section 7 makes the like provision as to similar property, which after that date shall be allotted to or placed, registered, or transferred into the name of a married woman. Section 8 extended these provisions to property standing in her name jointly with others, and section 9 enabled her to transfer the interest, whether standing in her own name or in her name jointly with others, without the concurrence of her husband. Section 10 re-enacts the proviso contained in the Act of 1870 as to investments with money of the husband without his consent, and section 6 of the Act of 1870 as to investments in fraud of the husband's creditors.

Section 10 of the Act of 1870 enabled a married

woman to effect a policy of insurance upon her own life or that of her husband for her separate use. It also enabled a man to insure his own life for the benefit of his wife and children. Section 11 of the Act of 1882 re-enacts this with certain additions, one of which is the power given to a married woman to insure her own life for the benefit of her husband or children. There are also important provisions as to the trust created by an insurance under the section, and as to the appointment of trustees.

Section 12 of the Act of 1882 gives remedies to a married woman for the protection and security of her separate property much more extensive than those she possessed under the Act of 1870. The principal of these is that which enables her to sue her husband, and even to take criminal proceedings against him. The latter remedy is confined, however, to acts done by the husband while they are living apart. (Section 16 gives a criminal remedy to her husband to the same extent, and in a similar case against the wife.) These remedies may be pursued by the wife in her own name as if she were a *feme sole*.

Section 13 renders a married woman liable to be sued alone in respect and to the extent of her separate property for her ante-nuptial debts, breaches of contract, and torts; section 14 frees the husband from liability beyond the amount of assets received through his wife; and section 15 regulates the procedure when they are sued jointly in respect of such liabilities. The proviso in sections 13 and 14 that nothing in the Act

shall diminish or increase the respective liabilities of husband or wife, if married before January 1st, 1883, has been already noticed.

It may conveniently be observed in this place, that while the Act renders a married woman having separate property liable for her debts, breaches of contract, and torts, and declares that as to her contracts she shall be deemed to have intended to bind her separate estate, it does not free her husband from his common law liability on her contracts, or for her torts during coverture. In order that he may be bound by her contracts, however, it will be necessary to show that she did not intend to bind her separate estate; but if this is shown his liability is not affected by the Act.

Section 17 replaces section 9 of the Act of 1870, as to the manner in which questions between husband and wife as to the ownership of property are to be decided. The Act of 1882 contains more explicit provisions on this subject than the earlier statute. Among them may be mentioned the power given to the bank or body with whom the property is deposited, or in whose shares, etc., it is invested, to apply for an order as well as the husband or wife; and the power to remove the proceedings by *certiorari* if the application is made to the county court.

The remaining sections of the Act of 1882 which correspond with sections of the Act of 1870 are sections 20 and 21, which render a married woman who has separate property liable to the parish for the main-

tenance of her husband, her children, and grandchildren—the provision as to the grandchildren being new.

The sections of the Act of 1882 which had no corresponding provision in the Acts of 1870 and 1874 may merely be mentioned in this place, the reader being referred to the notes to the several sections for their effect. They are section 3, relating to loans by a married woman to her husband; section 4, relating to the execution of a general power by will by a married woman; sections 18, 24, which enable a married woman to act, sue, and to be sued as a trustee, executrix, or administratrix without her husband, and which free her husband from liability for her breaches of trust or devastavit; section 19, which saves existing and future settlements and the effect of restraints on anticipation, except as to ante-nuptial liabilities; section 22, which repeals the Acts of 1870 and 1874, except as to rights acquired or liability incurred under them; and section 23, which provides that the legal personal representative of a married woman shall be liable to the same extent as the married woman would have been if living.

Such is a brief outline of the changes in the law effected by this important statute. For the detailed account of any of them the reader is referred to the notes appended to the several sections of the Act itself in the body of this work.

ARRANGEMENT OF SECTIONS.

SECT.

1. Married woman to be capable of holding property and of contracting as a *feme sole*.
2. Property of a woman married after the Act to be held by her as a *feme sole*.
3. Loans by wife to husband.
4. Execution of general power.
5. Property acquired after the Act by a woman married before the Act to be held by her as a *feme sole*.
6. As to stock, &c., to which a married woman is entitled.
7. As to stock, &c., to be transferred, &c., to a married woman.
8. Investments in joint names of married women and others.
9. As to stock, &c., standing in the joint names of married woman and others.
10. Fraudulent investments with money of husband.
11. Moneys payable under policy of assurance not to form part of estate of the insured.
12. Remedies of married woman for protection and security of separate property.
13. Wife's ante-nuptial debts and liabilities.
14. Husband to be liable for his wife's debts contracted before marriage to a certain extent.
15. Suits for ante-nuptial liabilities.
16. Act of wife liable to criminal proceedings.
17. Questions between husband and wife as to property to be decided in a summary way.
18. Married woman as an executrix or trustee.

SECT.

19. Saving of existing settlements, and the power to make future settlements.
 20. Married woman to be liable to the parish for the maintenance of her husband.
 21. Married woman to be liable to the parish for the maintenance of her children.
 22. Repeal of 33 & 34 Vict. c. 93 ; 37 & 38 Vict. c. 50.
 23. Legal representative of married woman.
 24. Interpretation of terms.
 25. Commencement of Act.
 26. Extent of Act.
 27. Short title.
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THE
MARRIED WOMEN'S PROPERTY ACT,
1882.

45 & 46 VICT. CAP. 75.

*An Act to consolidate and amend the Acts relating
to the Property of Married Women.*

[18th August, 1882.]

WHEREAS it is expedient to consolidate and amend the Act of the thirty-third and thirty-fourth Victoria, chapter ninety-three, intituled "The Married Women's Property Act, 1870," and the Act of the thirty-seventh and thirty-eighth Victoria, chapter fifty, intituled "An Act to amend the Married Women's Property Act (1870):"

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Sect. 1.

Married woman to be capable of holding property and of contracting as a *feme sole*.

1. (1.) A married woman shall, in accordance with the provisions of this Act, be capable of acquiring (a), holding (b), and disposing by will (c) or otherwise (d), of any real or personal property as her separate property (e), in the same manner as if she were a *feme sole* (f), without the intervention of any trustee (g).

(a) ACQUIRING.

Formerly the separate property of a married woman was acquired "either by contract with the husband before marriage, or by gift from him, or from any stranger wholly independent of such contract." (Per Lord LANGDALE, M. R., in *Tullett v. Armstrong*, 1 Beav. p. 21.) And she might have acquired property out of the savings of her separate income. Thus money so saved and personalty purchased with savings were held to belong to her separate estate. (*Gore v. Knight*, 2 Vern. 535; *Humphery v. Richards*, 2 Jur. (N.S.) 432; *Barrack v. McCulloch*, 3 K. & J. 110; *Muggeridge v. Stanton*, 1 D. F. & J. 107; *Butler v. Cumpston*, L. R. 7 Eq. 16; *Todd v. Moorhouse*, L. R. 19 Eq. 69; *Fitzgibbon v. Pike*, 6 L. R. Ir. 487; *Duncan v. Cashin*, L. R. 10 C. P. 554). And land purchased out of such savings was also held to be separate estate. (*Steward v. Blakeway*, L. R. 4 Ch. 603.) In *Brooke v. Brooke*, 25 Beav. 342, savings accumulated out of an allowance by the husband to his wife while living apart from him were held to be separate estate as against him; though in *Messenger v. Clarke*, 5 Ex. 388, it was held to be otherwise at common law. See also *In the goods of Tharp*, 3 P. D. 76. A married woman judicially separated from her husband was empowered to acquire property by virtue of the 20 & 21 Vict. c. 85, ss. 25, 26. Section 21 of the same Act enabled a wife deserted

Acquiring—*continued.*Sect. 1.

by her husband to apply to a police magistrate or justices in petty sessions for an order to protect any money or property she might acquire by her own lawful industry, and property which she might become possessed of after her desertion. Upon such order all such earnings and property belonged to her as if she were a *feme sole*, and the wife was deemed to be in all respects during the continuance of the order as if she had obtained a decree of judicial separation. (The decisions bearing on this section will be found concisely stated in Stone's Justices' Manual, 21st Edit., p. 832.) The 21 & 22 Vict. c. 108, s. 6, enabled the judge ordinary to make similar orders. By the 41 Vict. c. 19, s. 4, in case of the conviction of a husband for an aggravated assault on his wife, the court or magistrate convicting was empowered to grant an order having "the force and effect in all respects of a decree of judicial separation on the ground of cruelty." Under these sections a wife might acquire property as if she were a *feme sole*. The effect of the present act upon these sections seems to be that the latter are entirely abrogated in so far as their object is the protection of the earnings and property of married women who are deserted by or judicially separated from their husbands. As a married woman may now acquire and hold property as her separate property, she cannot require any order protecting such property in her hands, and she is, in fact, so far as the acquisition and holding of property is concerned, in the same position as she would have been in before the Act had she been judicially separated. (See *post*, sect. 2.) Application for these orders may possibly in future be refused for this reason.

Except in the cases already mentioned a married woman could not before 1870 have acquired separate property. By the Married Women's Property Act, 1870, a married woman was enabled to acquire property in a number of ways, but as these are all re-enacted in the

Sect. 1. Acquiring—continued.

Married Women's Property Act, 1882, it is unnecessary to enumerate them. The Act of 1882 does not interfere with the power of a married woman to acquire separate estate by settlement, or gift, or out of the savings of other settled estate. But the Act enables her to acquire separate property in other ways which will be noticed in due course in the notes to the several sections.

(b) HOLDING.

The husband has no power or right to interfere with his wife's separate estate in any way without her consent. For example, when a husband by a post-nuptial deed settled a house and business to the separate use of his wife to be managed by her for the benefit of herself as if she were a *feme sole*, the court (following *Green v. Green*, 5 Hare, 400 n,) restrained him from interfering in any way with the business and from continuing in possession of any part of the premises. (*Wood v. Wood*, 19 W. R. 1049; *Allen v. Walker*, L. R. 5 Ex. 187; and see *Knight v. Knight*, 5 Giff. 26.)

But when a wife expressly authorizes or tacitly permits her husband to receive the income of her separate estate, and it is applied for the benefit of the family, she cannot claim any reimbursement out of his estate, and this will be especially the case if the husband has continued to receive the income for a number of years. (*Caton v. Rideout*, 1 Mac. & G. 599, and see the cases cited in 1 W. & T. L. C. p. 551.) If there has been no permission or acquiescence on the part of the wife, the court may order him to restore to her what he has received (*Parker v. Brooke*, 9 Ves. 583; *Mawhood v. Milbanke*, 15 Beav. 36); but it has been held that she may not be a creditor against her husband's estate for more than one year's income received by him. (See a note to *Ex parte Elder*, in the matter of *Williams*, 2 Madd. at p. 286; *Townshend v. Windham*, 2 Ves. Sen. 7; *Parkes v. White*, 11 Ves. 225.) Of the recent decisions

Holding—continued.**Sect. 1.**

on this subject the following may be usefully consulted:—*Macbryde v. Eykyn*, 24 L. T. (N.S.) 461, affirmed on appeal 25 L. T. (N.S.) 192; *Jones v. Cuthbertson*, L. R. 7 Q. B. 218. In *Lane v. Oakes*, 30 L. T. (N.S.) 726, a woman married after the passing of the Act of 1870 became during her marriage entitled in possession to a sum of money to which before her marriage she was entitled in expectancy. She then joined with her husband in a petition to the Court of Chancery to pay the money to him in her right, and the money was paid to the husband's solicitor under a power of attorney from the husband. And it was held that the money was the husband's, as the wife had divested herself of her property in it by the petition to the court. In *Dixon v. Dixon*, 9 Ch. D. 587, the trustee of stock for the separate use of a married woman having improperly transferred it into the joint names of her husband and himself, the husband for six years received the dividends, after which the trustee died, and the husband without his wife's knowledge sold out the stock and applied the proceeds to his own use. Some time afterwards he left her. It was held that though the wife might have been presumed to have assented to her husband's actual receipt of the dividends while the stock remained intact, yet no such assent could be presumed after it had been sold, and that she was entitled to recover, as against her husband and the estate of the deceased trustee, the arrears of dividends which had accrued since that time, as well as to have the trust fund replaced.

(c) DISPOSING BY WILL.

At common law a married woman could not devise her real estate except by a will operating as an appointment under a power contained in a conveyance to a use (Jarman on Wills, p. 39.) She might, however, in equity have devised her real estate settled to

Sect. 1. Disposing by will—*continued.*

her separate use (*Taylor v. Meads*, 34 L. J. Ch. 203 ; *Pride v. Bubb*, L. R. 7 Ch. 64) ; and such a devise would have operated to defeat her husband's estate by the curtesy. (Per JESSEL, M.R., in *Cooper v. Macdonald*, 7 Ch. D. 288). She could not bequeath personal estate except in pursuance of an agreement before marriage, or of an agreement after marriage for consideration, or by virtue of a power of appointment. (1 *Roper, Husband and Wife*, 170 n.) She might, however, make a will of personalty if her husband assented, but such a will was only valid provided the husband did not revoke his assent during her lifetime, or after her death and before probate. Such a will, moreover, was only valid if the husband survived (*Roper*, 170 ; and see *Noble v. Wilcock*, L. R. 8 Ch. 778 ; per SELBORNE, L.C., at p. 790.) She might of course have bequeathed her interest in property settled to her separate use. (*Fettiplan v. Georges*, 1 Ves. Jun. 46 ; and see the cases cited in the notes to *Hulme v. Tenant*, 1 W. & T. L. C. 5th Edit. 529.) And as already stated, the savings out of the income of her separate estate were regarded as separate property, so that she might have disposed by will of such savings or property acquired with them. (*Brownrigg v. Pike*, 7 P. D. 61.) Under this section a married woman has a general power of disposing by will of any property held as her separate property.

In the event of the death of the wife without having disposed of her separate property by will, her husband will be entitled to an estate by the curtesy in her lands, if issue has been born capable of inheriting them. (*Appleton v. Rowley*, L. R. 8 Eq. 139 ; *Cooper v. Macdonald*, 7 Ch. D. 288.) In the absence of any disposition by her he becomes entitled *jure mariti* to her equitable interest in chattels real settled to her separate use. (*Archer v. Lavender*, 9 Ir. Rep. Eq. 220. And see *Eager v. Furnivall*, 17 Ch. D. 115.) He will also be entitled to her separate estate consisting of personalty. If

Disposing by will—*continued*.Sect. 1.

such personal estate is not actually in possession at her death, the husband is entitled only as his wife's administrator. (*Proudley v. Fieder*, 2 M. & K. 57.) If it is actually in possession he is entitled to it by virtue of his marital right without his taking out letters of administration to her estate. (*Moloney v. Kennedy*, 10 Sim. 254; and see Williams on Executors, 8th Edit. p. 755). The law as to the right of the husband to his wife's separate property undisposed of by act *inter vivos* or by her will is not affected by the present Act.

The right of the husband above referred to is of course subject to the payment of the wife's debts which are chargeable to her separate estate. (See *Turner v. Caulfield*, 7 L. R. Ir. 347.) It has been held that the earnings of a married woman which are separate estate under the Act of 1870, are like other separate estate before the Act equitable assets, and divisible among her creditors *pari passu*, so that her executor has no right to retain in full his own debt thereout. (*In re Poole*, *Thompson v. Bennett*, 6 Ch. D. 739, but see *post*, s. 23, and the note hereto.)

(d) OR OTHERWISE.

A married woman had always full power of disposing of her separate property in equity without her husband's assent or concurrence by act *inter vivos*. Thus in *Taylor v. Meads*, 34 L. J. Ch. 203, Lord WESTBURY, L.C., held that a married woman might convey the equitable fee in lands held by trustees to her separate use without the consent or concurrence of the husband, and without acknowledgment under the Fines and Recoveries Act, 3 & 4 Wm. 4, c. 74. (See also *Hall v. Waterhouse*, 5 Giff. 64; 13 W. R. 633; *Pride v. Bubb*, L. R. 7 Ch. 64.) Of course, this power of alienation possessed by a married woman was always subject to the restraint of anticipation, and the effect of such restraint is preserved by sect. 19 of this Act (*post*.) The

Sect. 1. Or otherwise—*continued.*

words of the Act enabling a married woman to dispose of her separate property, do not, therefore, extend the power she formerly possessed in equity.

(e) ANY PROPERTY.

This includes things in action. (See sect. 24, *post.*)

(f) AS IF SHE WERE A FEME SOLE.

“When the Courts of Equity established the doctrine of the separate use of a married woman, and applied it to both real and personal estate, it became necessary to give the married woman, with respect to such separate property, an independent personal status, and to make her in equity a *feme sole*. It is of the essence of the separate use that the married woman shall be independent of and free from the control and interference of her husband. With respect to separate property, the *feme covert* is, by the form of the trust, released and freed from the fetters and disability of coverture, and invested with the rights and powers of a person who is *sui juris*. To every estate and interest held by a person who is *sui juris* the common law attaches a right of alienation, and accordingly the right of a *feme covert* to dispose of her separate estate was recognized and admitted from the beginning until Lord THURLOW devised the clause against anticipation.” (Per Lord WESTBURY, L.C., in *Taylor v. Meads*, *sup.*)

(g) WITHOUT THE INTERVENTION OF ANY TRUSTEE.

In *Hulme v. Tenant*, 1 W. & T. L. C. 5th Edit. at p. 523, Lord THURLOW expressed an opinion that trustees were essential to the existence of the separate property of married women. But it has since been held in a long series of cases, that where there are no trustees, yet the husband will be considered in equity for her so that the trust may not be defeated. This section therefore simply declares what had been established in Courts of Equity. In the case of property

Without the intervention of any trustee—*continued.*

Sect. 1.

given by a husband to his wife for her separate use, if the gift is imperfect, amounting neither to transfer of the property nor a declaration of trust, the court cannot give effect to it. (*In re Breton's estate*, *Breton v. Woolven*, 17 Ch. D. 416.) This rule is not in any way altered by the present sub-section.

(2.) A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property (a) on any contract (b), and of suing and being sued (c), either in contract or in tort (d) or otherwise, in all respects as if she were a *feme sole* (e), and her husband need not be joined (f) with her as plaintiff or defendant, or be made a party to any action or other legal proceedings brought by or taken against her; and any damages or costs recovered by her (g) in any such action or proceeding shall be her separate property; and any damages or costs recovered against her (h) in any such action or proceeding shall be payable out of her separate property, and not otherwise.

(a) IN RESPECT OF AND TO THE EXTENT OF HER SEPARATE ESTATE.

These words limit the liability imposed upon a married woman by this sub-section. (See note (b), *post*, p. 66.) In equity a personal decree was never made against a married woman; the decree was against her separate estate only. (See the cases cited in 1 W. & T., L. C. 554; and see *Davies v. Jenkins*, 6 Ch. D. 728;

Sect. 1. In respect of, &c., her separate estate—*continued.*

Collett v. Dickenson, 11 Ch. D. 687.) In *Attwood v. Chichester*, 3 Q. B. D. 722, judgment by default was obtained against a married woman, and an order was made requiring the debt to be paid by instalments. The Court of Appeal set aside the judgment on the ground that a married woman was not liable to be sued personally in respect of a debt contracted during her coverture. COTTON, L.J., said: "In equity a married woman could bind her separate estate, but she could not render herself personally liable; in a court of law she could not be held responsible upon any contract entered into during coverture, so that neither at law nor in equity could a creditor enforce a personal remedy against her. And none of the provisions of the Judicature Acts have rendered a married woman liable to be sued as if she were unmarried In order to obtain payment out of her separate estate she ought to have been sued together with her husband and the trustees of her settlement; the present action was brought for the purpose of obtaining a judgment which cannot lawfully be obtained against a married woman." (See also *Durrant v. Ricketts*, 8 Q. B. D. 177, and *Davis v. Ballenden*, 46 L. T. (N.S.) 797.) In a previous case (*Dillon v. Cunningham*, L. R. 8, Ex. 23) it had been held that an order under the Debtors' Act, 1869, s. 5, might be made against a married woman. But in that case there was no plea of coverture, and the ground of the decision seems to have been that given by MARTIN, B., who said: "My opinion is that where an action is brought against a married woman *simpliciter*, and judgment recovered, she cannot show by any subsequent proceedings that she is a married woman." It does not follow that the judgment might not have been set aside, as was actually done in the similar case of *Attwood v. Chichester*. The case is therefore no authority for the proposition that up to

In respect of, &c., her separate estate—*continued.*

Sect. 1.

the date of the present Act there was any personal remedy against a married woman. In one case, however, it was held that a married woman might be arrested in execution on a *ca. sa.* for a debt contracted *dum sola*. This decision was based on the language of The Married Women's Property Act, 1870, s. 12, which provided that a husband should not be liable for his wife's debts contracted before marriage, but that the wife should be liable to be sued for, and that any property belonging to her for her separate use, should be liable to satisfy such debts as if she had continued unmarried. (*Nagle v. O'Donnel*, 7 Ir. Rep. C. L. 79.)

Under this sub-section the married woman is now capable of suing and being sued in all respects as if she were a *feme sole*. It seems to follow therefore that judgment may now be given against her and that execution may be granted against her separate estate. It seems also that an order may be made against her under the Debtors' Act, 1869, s. 5, and that she may be committed in case of her wilful default to comply with such order.

(b) ON ANY CONTRACT.

At common law a married woman could not make a valid contract. In *Fairhurst v. The Liverpool Loan Association*, 23 L. J. Ex. at p. 164, POLLOCK, C.B., said: "A *feme covert* is unquestionably incapable of binding herself by a contract; it is altogether void, and no action will lie against her husband or herself for the breach of it." To this rule, however, there were certain exemptions, as where she was judicially separated from her husband or had obtained a protection order (20 & 21 Vict. c. 85, ss. 21, 26; 21 & 22 Vict. c. 108, ss. 6, 8); where the husband was civilly dead, as where he was outlawed or undergoing a sentence of transportation or penal servitude (Co. Litt.

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132b, 313a; *Carrol v. Blencow*, 4 Esp. 27; *Ex parte Franks*, 7 Bing. 762), and perhaps also in certain cases where he was an alien (*Walford v. Duchesse de Pienne*, 2 Esp. 554; *Franks v. Duchesse de Pienne*, 2 Esp. 587; *De Gaillon v. L'Aigle*, 1 B. & P. 357; *Kay v. Duchesse de Pienne*, 3 Camp., 123; *Barden v. Keverberg*, 2 M. & W. 61). A married woman might also enter into valid contracts by the customs of the City of London if carrying on a separate trade there, but this custom was held to be recognizable in the city courts only, and not in the supreme courts. (*Caudell v. Shaw*, 4 T. R. 361.)

The effect of the Married Women's Property Act, 1870, on the power of a married woman to enter into contracts was thus stated by JESSEL, M.R., in *Howard v. The Bank of England*, L. R. 19 Eq., at p. 301: "The Act gives no power to contract to a married woman which she did not possess before. It does make certain property, property to her separate use, to that extent carrying with it a power to contract in respect of that property which every married woman previously possessed in a court of equity, and it super-adds to that certain remedies in a court of law which it is considered desirable to give to the married woman in respect of these small sums, but beyond that I think the Act makes no alteration in the position of the married woman." In *Summers v. The City Bank*, L. R. 9 C. P. 580, it was held that a married woman carrying on a separate business might bring an action in her own name to recover damages against her husband for dishonouring her cheques. But Lord COLERIDGE, C.J., said: "Our decision in favour of the plaintiff under these circumstances must not be taken to affirm, nor will it affirm, the general proposition that under this Act (of 1870), and without reference to peculiar circumstances, a married woman can contract."

On any contract—*continued.*

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In equity a married woman could always enter into contracts with regard to her separate estate, even with her husband. (*Woodward v. Woodward*, 3 De G. J. & S. 672; *Jones v. Cuthbertson*, L. R. 7 Q. B. at p. 224.) As already mentioned, she might alien or dispose of it as she thought fit. It is unnecessary to enumerate here the long series of cases which established that in equity separate property might be rendered liable in respect of the general engagements of a married woman. These will be found collected in the important cases of *Johnson v. Gallagher*, 3 D. F. & T. 494; and *The London Chartered Bank of Australia v. Lempriere*, L. R. 4 P. C. 572. It is enough to say that these cases decided that the general engagements of a married woman might bind her separate estate, provided it appeared that such engagement was made with reference to and upon the faith or credit of that estate, this being in every case a question for the court to decide, according to the circumstances. (See *In re Bromley*, *Bromley v. Norton*, 21 W. R. 155.) In the *National Provincial Bank of England v. Thomas*, 24 W. R. 1013, JESSEL, M.R., held that neither the special nor the general engagements of a married woman had any further effect against her separate property than to give the creditor a right to be paid out of it by obtaining execution, and that no charge was created on the property; he therefore refused to grant an injunction to restrain her disposing of it, sending an action to obtain payment of the amount out of her separate estate. (And see *Robinson v. Pickering*, 16 Ch. D. 660.)

As to the power of a married woman to enter into binding contracts as her husband's agent, see the note to the next sub-section.

The word "contract" includes the acceptance of any trust or of the office of executrix or administratrix. (See s. 24, *post.*)

Sect. 1. (c) SUING AND BEING SUED.—

See a previous note to this sub-section. As to the operation of the statute of limitations in such cases, see *Hodgson v. Williamson*, 15 Ch. D. 87, *post*.

(d) IN TORT.—

A married woman may now sue in her own name for a tort. Formerly with respect to injuries to the person of the wife during coverture, the husband and wife must have joined in suing (Bullen and Leake, 4th Edit., 436), unless she were living separate from him, after a judicial separation or an order for protection. (*Ramsden v. Brearley*, L. R. 10 Q. B. 147; *In re Insole*, L. R. 1 Eq. 471.) In respect of injuries to personal property the husband only could sue, and in respect of injuries to real property of which the husband and wife were seised or to which they were entitled in the right of the wife, the husband might sue alone or the husband and wife might join in suing. (Bullen and Leake, p. 437.) A husband might always have sued alone for the consequential damages occasioned to himself in consequence of the injury to his wife, and the present Act makes no alteration of the law in this respect; but as a tort to his wife or her estate during coverture is a thing in action and therefore separate property under sub-sect. 1, and s. 24 (*post*), it would seem that except in respect of such consequential injuries a husband has now no right of action for an injury to his wife; of course in the event of an injury causing death, the husband would still be entitled to his remedy under Lord Campbell's Act, 9 & 10 Vict. c. 93, both for the personal injury to himself and as his wife's administrator. (See Addison on Torts, 5th Edit., 550; *Leggott v. The Great Northern Railway Company*, 1 Q. B. D. 599.)

With respect to the liability of a married woman for torts committed by her before marriage, see sect. 13, *post*. As to her torts committed during coverture she is by this section rendered liable, but it is to be

In tort—*continued.*

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observed that the right to sue the husband and wife jointly for a tort by the wife is not taken away. A plaintiff may, therefore, in future elect to sue the wife alone or the husband and wife jointly. The husband formerly was, and, it is submitted, still is answerable for all his wife's torts committed during coverture, but it is stated that the action must be against them jointly, for if she alone were sued it might be a means of making the husband liable without giving him an opportunity of defending himself. (Bac. Abr. Baron & Feme, L.) This liability of the husband was held to exist even while they were living separate (*Head v. Briscoe*, 5 C. & P. 484); but not after they had been judicially separated (20 & 21 Vict. c. 85, s. 26); nor after divorce for a tort committed during coverture, nor after her death, (*Capel v. Powell*, 34 L. J. C. P. 168.) In *Fairhurst v. The Liverpool Adelphi Loan Association*, 23 L. J. Ex. 163, it was held that although a married woman was generally responsible for all torts committed by her during coverture, and the husband must be joined with her as a defendant, yet she was not responsible for, nor could her husband be sued in respect of a fraud which was directly connected with a contract by her and which was in fact the means of effecting it. It was therefore held that an action would not lie against husband and wife for a false and fraudulent representation that she was sole and unmarried, whereby the plaintiff was induced to take her promissory note as security for a loan to a third person. The court was equally divided on the same point in *Wright v. Leonard*, 30 L. J. C. P. 365. Whatever view may be taken of the law in such cases, it is not affected by this section, for it does not render a husband liable to any greater extent than before the Act. The wife herself, however, would now be liable for such a misrepresentation.

Sect. 1. In tort—*continued.*

In *Wainford v. Heyl*, L. R. 20 Eq. 321, it was held that the separate estate of a married woman was not liable for general torts, but that it might be liable where the tort was a fraud relating to her separate estate ; but then only when time was no restraint upon anticipation. (*Arnold v. Woodhams*, L. R. 16, Eq. 29 ; *Stanley v. Stanley*, 7 Ch. D. 589.) As already stated, by the present sub-section the separate estate is now liable for any of her torts, but this will be subject to any restraint on anticipation, as to which see sect. 19, *post*.

As to the liability of a married woman for breaches of trust, see the note to sect. 24, *post*.

(e) AS IF SHE WERE A FEME SOLE.

This enables her to bring actions in her own name. (See *Ramsden v. Brearley*, L. R. 10 Q. B. 147 ; *In re Insole*, L. R. 1 Eq. 471.) In actions brought under this sub-section it will not be necessary therefore for a married woman to sue by her next friend as formerly required by the rules of the Supreme Court, as to which see *post*. (See *In re Fisher's Trusts*, 45 L. T. (N.S.) 504, and *post*, p. 59.) Nor will security for costs be required for her.

(f) HER HUSBAND NEED NOT BE JOINED, ETC.

By the rules of the Supreme Court, order 16, rule 8, married women were empowered to sue as plaintiffs by their next friends, in the manner practised in the Court of Chancery before the passing of the Judicature Act. They might also, by the leave of the court or a judge, sue or defend without their husbands and without next friends, on giving such security (if any) for costs as the court or a judge might require. Except in cases where a married woman was enabled to sue in her own name, it was held that since the Judicature Acts, as before, a married woman suing to recover separate estate ought to sue by a next friend,

Her husband need not be joined, etc.—continued.

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making her husband a defendant. (*Roberts v. Evans*, 7 Ch. D. 830.) But in a case where she sued alone and the defendant applied to stay the action until she added a next friend or gave security for costs and the court refused such application, it was held that such refusal was equivalent to leave to her to sue alone (*Kingsman v. Kingsman*, 6 Q. B. D. 122.) It will not be necessary for the husband to be party to any action brought by her by virtue of this section.

In *Hancocks v. Lablache*, 3 C. P. D. 197, it was held that the husband must be joined with his wife as a defendant in an action to charge wages and earnings which were her separate property under the Married Women's Property Act, 1870, for that Act, though it gave her power to sue alone in respect of such separate estate, did not enable her to be sued. And as already stated, it was in general necessary in order to charge her separate estate to join both her husband and the trustees of her settlement. (*Attwood v. Chichester*, ante; see also *Davies v. Jenkins*, 6 Ch. D. 728; *Collett v. Dickinson*, 11 Ch. D. 687; *Flower v. Buller*, 15 Ch. D. 665.) This will no longer be necessary.

(g) DAMAGES OR COSTS RECOVERED BY HER.

This is a new method of acquiring separate estate.

(h) DAMAGES OR COSTS RECOVERED AGAINST HER.

The procedure in actions against a married woman having separate estate is entirely changed by this subsection. As judgment may now be obtained against her, she may be proceeded against under the rules of the Supreme Court, order 14, thus rendering of no effect the decisions in *Ortner v. Fitzgibbon*, 50 L. J. Ch. 17; *Durrant v. Ricketts*, 8 Q. B. D. 177. And execution must issue against her separate estate, except in cases where there is a restraint on anticipation, as to which see sect. 19, post.

Sect. 1. (3.) Every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property, unless the contrary be shown.

The law as it existed previous to the present enactment was thus stated by TURNER, L.J., in *Johnson v. Gallagher*, 3 Deg. F. & J. 494—"I think that in order to bind the separate estate by a general engagement, it should appear that the engagement was made with reference to and on the faith or credit of that estate; and that whether it was so or not is a question to be judged of by this court upon all the circumstances of the case." This was followed in *Bromley v. Norton*, 27 L. T. (N.S.) 478. There an Englishman with his wife and children went to a foreign hotel and stopped there three months, the weekly bills which were made out "for Mr. B. and family" remaining unpaid. The husband then absconded without paying, and the wife and children remained for a fortnight longer at the hotel. The hotel keeper having caused the wife to be arrested, her father sent his secretary from England to procure her release. Before she was released a memorandum was signed by her and by the secretary, by which in effect she acknowledged the total amount of the hotel bills to be her own debt; £100 was paid on account of the debt and £100 was promised. The £200 was paid but the hotel keeper was unable to obtain any further payment from the husband. The wife having died he sought to make her separate estate liable for the balance of the debt, but it was held not to be liable.

By this sub-section the presumption will in future be in favour of the intention to charge the separate estate. But it may be shown that this was not intended, by evidence that the wife contracted, not with reference to her separate estate, but as agent for her husband. Except in so far as the presumption is altered by the

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present sub-section, the law on this subject remains as before the Act, and will be found discussed in the notes to *Manby v. Scott*, 2 Smith's L. C. 445. It may be thus very concisely stated—"During cohabitation there is a presumption from the very circumstances of the cohabitation of the husband's assent to contracts made by the wife for necessities suitable to his degree and estate" (2 Sm. L. C. p. 497), or to the degree which he permits her to assume. But this presumption may be rebutted. Thus the husband may prove that the articles supplied are not suitable to his estate and degree or that which he permits his wife to assume. And he may prove that she had no authority either express or implied to contract for him at all. Thus he may show that she was already supplied with necessities or has a sufficient allowance wherewith to purchase them. (*Renearx v. Teakle*, 8 Ex. 680; *Debenham v. Mellon*, 6 Ap. Ca. 24.) The presumption may also be rebutted by proof that the wife has been forbidden to pledge the husband's credit, and that although no notice of the fact may have been given to the tradesmen who have supplied the goods. This was so held in *Jolly v. Rees*, 15 C. B. (N.S.) 628, which was approved of by the court in *Debenham v. Mellon*, *sup.* The extent to which a wife living with her husband is presumed to have authority to contract on his credit is thus stated by BOVILL, C.J., in *Phillipson v. Hayter*, L. R. 6 C. P. at p. 41—"The domestic arrangements of the family being usually left to the control of the wife, her authority extends to all those matters which fall within her department, as for instance the supply of provisions for the house, clothing for herself and children, and things of that sort. Or, if the wife with the concurrence of her husband carries on a separate trade, goods supplied to her for the purposes of that trade would fall within the same category." And WILLES, J., said—"What the law infers is, that the wife has authority to contract for things that are really necessary and suitable to the

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style in which the husband chooses to live, in so far as the articles fall fairly within the domestic department, which is ordinarily confided to the management of the wife. (And see per BLACKBURN, J., in *Debenham v. Mellon*, *sup.*) When a married woman is living apart from her husband by consent it is presumed that she has no authority to contract so as to bind him, but this presumption must also be rebutted. Therefore, if no allowance is made to her for necessities she may pledge her husband's credit for them. On the other hand, if an allowance is agreed upon, authority to bind the husband cannot be inferred from its being inadequate as long as it is paid." (*Johnson v. Sumner*, 27 L. J. Ex. 341; *Biffin v. Bignell*, 31 L. J. Ex. 189; *Richardson v. Dubois*, L. R. 5 Q. B. 51; *Eastland v. Burchell*, 3 Q. B. D. 432.) If a wife leaves her husband without his consent she has no authority to bind him. If, however, she is forced to leave him by his misconduct or cruelty she has an implied authority to pledge his credit for necessities, and this is a presumption of law which cannot be rebutted. (*Boulton v. Prentice*, Str. 1214; *Forristall v. Lawson*, *Conelly v. Lawson*, 34 L. T. (N.S.) 903; *Beale v. Arabin*, 36 L. T. (N.S.) 249.) But even in this case if he make her an adequate allowance he is not responsible for her debts, although they may have been contracted for necessities, except where such debt is incurred in obtaining protection by articles of the peace against his own violence. (*Turner v. Rookes*, 10 A. & E. 47.) When husband and wife are judicially separated it is provided by the 20 & 21 Vict. c. 85, s. 25, that, if alimony has been decreed to the wife and is not duly paid by the husband, he shall be liable for necessities supplied for her use. If the separation is due to the misconduct of the wife the husband is not liable to maintain his wife even under the Poor Laws (*Culley v. Charman*, 7 Q. B. D. 89), and she has no authority to bind the husband. It was formerly considered that a husband was not liable for money lent to his wife

and afterwards applied by her in procuring necessities (See *Knox v. Bushell*, 3 C. B. (N.S.) 334.) It has now been held otherwise in equity, and since the Judicature Act that will now be the rule at law. (*Dean v. Southen*, L. R. 9 Eq. 151.)

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(4.) Every contract entered into by a married woman with respect to and to bind her separate property shall bind not only the separate property which she is possessed of or entitled to at the date of the contract, but also all separate property which she may hereafter acquire.

In *Pike v. Fitzgibbon*, 17 Ch. D. 454, it was held that the general engagements of a married woman entitled to separate estate can be enforced by a court of equity only against so much of the separate estate to which she was entitled free from any restraint on anticipation at the time when the engagements were entered into, as remains at the time when judgment is given; and not against separate estate to which she became entitled after the time of the engagements, nor against separate estate to which she was entitled at the time of the engagements subject to a restraint on anticipation. (See also *Fitzgibbon v. Blake*, 3 Ir. Ch. Rep. 328; *Smith v. Lucas*, 18 Ch. D. 531.) This sub-section renders after-acquired property liable for the engagements of a married woman. It does not, however, seem to enable her to contract with respect to or to bind property settled to her separate use subject to a restraint on anticipation, for this sub-section has to be read with sect. 19, *post*, which saves the effect of a restriction on anticipation except in certain specified cases.

(5.) Every married woman carrying on a trade separately from her husband shall, in respect of her

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A married woman might formerly have been adjudicated a bankrupt if trading as a *feme sole* by the custom of the city of London. (*Lavee v. Phillips*, 3 Burr. 1783; *Ex parte Carrington*, 1 Atk. 206.) The present sub-section extends this liability to the case of every woman carrying on a trade separately from her husband. It is to be observed that the trading must be a separate trading. In *Jarman v. Woolloton*, 3 T. R. 618, it was decided that whether the trade be carried on solely by the wife or jointly with the husband is a question of fact, and that in the latter event the stock-in-trade would be subject to the husband's debts. (And see *Langham v. Bewett*, Cro. Car. 68.)

In *Petty v. Anderson*, 3 Bing. 170, a married woman carried on business on her own account during the imprisonment of her husband, and he returned to live with her after his discharge. It was held that as he took advantage of the trade that was carried on, by living on the profits, a legal presumption arose from that circumstance that his wife conducted the trade as his agent. He and not his wife was therefore held liable for goods supplied to the business while so living with her. And in *Laporte v. Cosstick*, 23 W. R., at p. 133, BLACKBURN, J., said—"Separate (trading) does not mean bodily separate. The husband and wife may very well live together, and yet there may be a separate trading; the husband might for this purpose be only in the position of a lodger; but where the husband takes such a part in carrying on the business as to make himself personally liable, there cannot be a separate trading."

This sub-section applies only to married women who are traders. The Act does not say that other married women may be made bankrupt, and it may be argued that the specification of one case in which this

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may happen implies that it shall not happen in others. Before the Act it was held that a married woman whose husband had been sentenced to transportation was liable to be made a bankrupt if she became a trader. (*Ex parte Franks*, 7 Bing. 762.) And the same would probably have been held in the case of any married woman who had power to sue or be sued without her husband at common law, as when he was civilly dead, or she was living apart from her husband under a judicial separation or order of protection. But, although the Married Women's Property Act, 1870, sect. 12, enabled a married woman to be sued in respect of debts contracted before marriage, yet it was held in *Ex parte Holland*, *In re Heneage*, L. R. 9 Ch. 307, that a married woman who had no separate estate could not be adjudicated a bankrupt in respect of such a debt. MELLISH, L.J., expressed a doubt whether she might not have been liable to be adjudicated a bankrupt if she had possessed separate estate. But in *Ex parte Jones*, *In re Grissell*, 12 Ch. D. 484, the Court of Appeal held that a married woman was not liable to the bankrupt law even though she had separate estate and had contracted engagements after her marriage; and that the Married Women's Property Act, 1870, did not make any difference in this respect. The ground of this decision was that before the passing of the Act of 1870 a married woman could not be made personally responsible for her contracts even if she had separate estate, and could not therefore become bankrupt. The Act of 1870 did not render a married woman capable of being sued personally for debts contracted after marriage, and therefore did not alter the law. It is to be observed that in one instance the Act of 1870 did render a married woman liable to be sued personally—viz., for debts contracted before marriage (sect. 12). That section provided that "the wife shall be liable to be sued for and that any property belonging to her for her separate use shall be liable to satisfy

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such debts as if she had continued unmarried." Now these words are practically the same as those of sect. 1 sub-sect. (2) (*sup.*) and sect. 13 (*post*); and it was held in *Ex parte Holland* (*sup.*) that they did not render a married woman liable to be made a bankrupt in respect of debts within sect. 12, although that section enabled her to be personally sued in respect of them. The reason was thus stated by LORD CAIRNS—"The words are, 'the wife shall be liable to be sued.' These are technical words and *prima facie* relate to nothing but a suit at law or in equity, and I should be disposed to read them as meaning that, although the husband should not be liable for the debts, yet the wife might be sued at law or in equity as if she were unmarried. That right has been exercised by the creditor in the present case, who has brought an action, and the action has resulted in a judgment against her which has been unproductive. For the purpose of expounding these words an argument was used by Mr. POLLOCK. And it is the only argument which could be of any avail to him, that the words must be understood to include every result which fairly follows from a suit at law or in equity, and that one of these results is a debtor's summons which would form the foundation of an adjudication in bankruptcy. But he was obliged to confess that all the ordinary consequences of a suit at law or in equity would not follow; for when I put the question to him whether property not settled to her separate use could be taken in execution, he was obliged to admit that it could not be taken. Therefore the argument fails, for it is clear that some of the ordinary consequences of a suit do not follow in the case of a married woman. It appears to me that the words 'liable to be sued for' are only introduced for the purpose of being connected with the following words 'any property belonging to her for her separate use.' I think the meaning of the section is that although the husband is not liable for

the debts in question, the separate property of the wife is to be liable, and that for the purpose of reaching it she is to be subject to the ordinary process of law or equity." These words are, it is submitted, in all respects applicable to the liability imposed by the present Act upon a married woman. Under both sect. 1, sub-sect. (2) and sect. 13 she is made liable only "in respect and to the extent of her separate estate." It is submitted therefore that under this Act a married woman cannot be made a bankrupt except in cases falling within the present sub-section.

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2. Every woman who marries after the commencement of this Act (*a*) shall be entitled to have and to hold as her separate property and to dispose of in manner aforesaid (*b*) all real and personal property (*c*) which shall belong to her (*d*) at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money, and property (*e*) gained or acquired by her in any employment, trade, or occupation (*f*), in which she is engaged, or which she carries on separately from her husband (*g*), or by the exercise of any literary, artistic, or scientific skill (*h*).

(a) AFTER THE COMMENCEMENT OF THIS ACT.

That is to say, after Jan. 1st, 1883 (sect. 25, *post*); see sect. 5 as to the application of the Act to women married before the commencement of the Act.

(b) IN MANNER AFORESAID.

This refers to sect. 1, which declares that a married woman shall be capable of holding and disposing of

Sect. 2. In manner aforesaid—*continued.*

separate property as a *feme sole*. This section declares that she shall be *entitled* to have and to hold and to dispose of such separate property, thus actually vesting in her the property which the former section had only declared her capable of possessing.

(c) ALL REAL OR PERSONAL PROPERTY.

This includes things in action (sect. 24, *post*). There is, therefore, no limit to the property thus declared to be separate property.

It will be observed that these words are substituted for sects. 1, 7 & 8 of the Act of 1870. These sections were very limited in their application, and their effect has been already stated. (See Introduction, *ante*.)

(d) WHICH SHALL BELONG TO HER, &c.

These words, together with the subsequent phrase, *or which shall devolve upon her after marriage*, will include property to which at the date of her marriage she is entitled in expectancy, but of which she only becomes actually possessed after the marriage. (See *Lane v. Oakes*, 22 W. R. 709, as to the meaning of the words "shall during her marriage become entitled" in sect. 7 of the Act of 1870.)

(e) WAGES, EARNINGS, MONEY, AND PROPERTY.

The Act of 1870, sect. 1, contained a provision similar to this. It has already been noticed (*ante*, p. 4) that savings out of separate estate are to be regarded as separate estate also. The word *money* in the section evidently means money saved. *Property gained or acquired* protects investments of such savings in the purchase of real or personal property of any kind.

In *Ashworth v. Outram*, 5 Ch. D., at page 940, Lord COLERIDGE, C.J., said—"If the wages and earnings of a married woman are to be protected in

Wages, earnings, money, and property—*continued*.

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an employment, the property, capital, stock, and effects embarked and employed in it at the time of the marriage, if they are allowed to be continued in the employment, and wages and earnings are allowed to be made therefrom, are protected by this section (sect. 1 of the Act of 1870) as necessary for the making of such wages and earnings."

(f) EMPLOYMENT, TRADE, OR OCCUPATION.

In *Mason v. Mitchell*, 34 L. J. Ex. 68, it was held that the protection of an order granted to a wife under the 20 & 21 Vict. c. 85, sect. 21, was confined to the lawful earnings of a lawful industry, and did not extend to earnings, or property purchased with earnings, acquired by her as the keeper of a brothel. This decision depended, however, upon the words of the statute which protect "any money or property she may acquire by her own lawful industry."

(g) SEPARATELY FROM HER HUSBAND.

What amounts to a separate trading has already been partially described in a note to sect. 1 sub-sect. (5). In addition to the authorities there cited we may add the following :—

In *Ashworth v. Outram*, 5 Ch. D. 923, a woman in 1855 entered the service of a man as housekeeper in a house which was in his occupation, but which was not his ordinary place of residence. In 1861 she commenced the business of preserving fruit, which was begun upon a small scale, but gradually became a large wholesale business. It was carried on by her in her own name ; she kept a separate banking account ; and he admitted that it was her own business, and was managed solely by her, though he sometimes assisted. In 1874 he married her. After the marriage the business was carried on by her as before, in her maiden

Sect. 2. Separately from her husband—*continued.*

name; her husband resided in the house where it was carried on, but it did not appear that he took any further part in it than he had done before the marriage. He shortly afterwards died intestate. It was held by the Court of Appeal that the stock-in-trade and capital of the business belonged to the widow, and were not part of the husband's estate. Per JAMES, L.J.—“The trade itself becomes her separate property, and everything that is incident to and connected with the trade becomes, in my opinion, part of that separate trade, and the husband is, if and so far as he is necessary, a trustee of everything which was devoted to that trade of which he had allowed the wife to be the separate owner.” (And see per COLERIDGE, C.J., quoted *supra*.)

A., a butcher (not within the City of London), in consequence of confirmed intemperance became incapable of continuing his business, and was removed to the workhouse infirmary suffering from delirium tremens. On his removal, a friend at various times lent his wife sums of money to enable her to purchase meat wherewith to carry on the business for the support of the family. She continued to do so for several months, her husband on his return from the infirmary never in any way interfering, but residing for part of the time in an upper room of the house. Meat which had been so purchased by the wife was seized in execution for a debt of the husband's, and upon an interpleader summons the county court judge came to the conclusion—whether as a matter of law or of fact did not appear—that the case was not within the Married Women's Property Act, 1870. Upon appeal to a divisional court, it being agreed that the court should draw inferences from the facts as stated by the judge, it was *held* that the case disclosed such a separate trading by the wife as to warrant them in holding that the goods seized were the property of the wife. LINDLEY, J., said: “Having regard to the con-

Separately from her husband—*continued.*

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dition of the husband, and seeing the sources from which the money whereby the wife was enabled to carry on the business came, that the husband's credit was in no way pledged for it, and that he had for a period of six months never interfered at all with the business, though he must have known that his wife was carrying it on without any assistance from him, I agree that we may fairly hold that the meat seized was the property of the wife separately from her husband. It is not an immaterial fact that the money advanced to his wife was advanced without interest. If the county court judge thought that the fact that the husband lived in the house at the time was conclusive of the question (as we are informed he did), I must say I should not have agreed with him. I arrive at this result because I think there is abundant evidence that the business was *for the time* the separate business of the wife."

A married woman conducted the business of a lodging-house keeper at two houses, one of which belonged to her husband, the other being settled to her separate use. It was *held* by Lord SELBORNE, C., and MELLISH, L.J., following *Barrack v. McCulloch*, 3 K. & J. 110, that the husband might permit her to appropriate the net profits of both houses to her separate estate: *Lumley v. Timms*, 21 W. R. 494.

A married woman carried on in her maiden name a millinery business separately from her husband. A debtor's summons was issued against the husband and wife claiming the payment of a sum due upon some bills of exchange drawn by the summoning creditor upon and accepted by the wife in her maiden name and dishonoured. The husband applied to the court to dismiss the summons. He deposed that he never authorized his wife to pledge his credit, and that five years previously he had given notice to the sum-

Sect. 2. Separately from her husband—*continued.*

moning creditor that he had nothing to do with his wife's business. On this evidence, which was uncontradicted, the registrar made the common order staying the proceedings on security being given by the husband. It was *held* by the Court of Appeal that the husband was not liable for the debt, that the issuing of the summons was an abuse of the procedure, and that the summons must be dismissed with costs. (*Ex parte Shepherd, In re Shepherd*, 10 Ch. D. 573.)

(h) LITERARY, ARTISTIC, OR SCIENTIFIC SKILL.

A married woman may acquire besides money any other property, such as copyright. (See *Warne v. Routledge*, L. R. 18 Eq. 497.)

Loans by
wife to
husband.

3. Any money or other estate of the wife lent or entrusted by her to her husband for the purpose of any trade or business carried on by him, or otherwise, shall be treated as assets of her husband's estate in case of his bankruptcy, under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, but not before, all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied.

It was held in *Woodward v. Woodward*, 3 Deg. J. & S. 672, that a married woman might lend her husband money forming part of her separate estate, and might sue him in respect of such loan. It was also held that she was entitled to prove upon his estate in

an administration such as a creditor in respect of the loan. **Sect. 3.**

It would, of course, follow from the powers given by this Act to a married woman that she might lend her husband a sum of money out of her separate estate, and the opening words of the section recognize her ability to make such a loan for any purpose. But for the remainder of the section she would have been entitled in the event of his bankruptcy to prove and claim as an ordinary creditor. She is not, however, to be allowed to do so until all claims of the other creditors of the husband for valuable consideration have been satisfied. It is to be observed that this restriction is in the same words which are used in the 28 & 29 Vict. c. 86, s. 5, to postpone persons who have an interest in the profits of a partnership to other creditors. Under that statute, when a loan was made, and the amount of the loan and interest were secured by a mortgage to the lender of the lease of the house where the business was carried on and of the goodwill of her business, on the borrower becoming bankrupt, it was held that the rights of the mortgage under his mortgage were in no way affected by the 28 & 29 Vict. c. 86, s. 5. (*Ex parte Sheil, In re Lonergan*, 4 Ch. D. 789.) The principle of this case seems to be strictly applicable to a loan by a married woman to her husband as affected by this section. If she takes security from her husband the validity of the security will be unimpaired by the husband's bankruptcy, and that although by the terms of this section she cannot recover the loan itself until after all other creditors for value have been satisfied.

A married woman having separate estate may be a partner. (*Mrs. Matthewman's case*, L. R. 3 Eq. 781; *Lindley on Partnership*, 84.) And there seems to be no reason why she should not be a partner with her husband in respect of her separate property. She might also lend him money, receiving in return a

Sect. 3.

share of the profits, in which case she would not be a partner, provided she observed the requirements of the 28 & 29 Vict. c. 86, s. 1 (as to which see *Pooley v. Driver*, 5 Ch. D. 458).

4. The execution of a general power by will by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities in the same manner as her separate estate is made liable under this Act.

In the *London Chartered Bank of Australia v. Lempriere*, L. R. 4 P. C., at p. 592, JAMES, L.J., said—“The separate estates of married women being thus far bound by their debts, obligations, and engagements, it has next become a question how far those debts, obligations, and engagements affect the corpus of the property where the married woman has a limited interest only, as, for instance, a life estate with a power of appointment. The cases on this subject may, as it seems to me, well be classed under three heads—1st. Where the power of appointment has been general, by deed or writing or by will. 2ndly. Where it has been by will only, and the power has been exercised. 3rdly. Where there has been a limitation in default of appointment, and the power has not been exercised. In cases falling under the third class there cannot, as it seems to me, be any reasonable doubt that the debts and engagements of the married woman cannot prevail against the parties entitled in default of appointment, and the case of *Nail v. Punter*, 5 Sim. 555, impliedly decides that point. In cases falling under the second class, where the power of appointment is by will only, and has been exercised, but not for creditors, the authorities do not appear to me to be consistent. In *Norton v. Turvill*, 2 P. Wms. 144, as explained in *Sockett v.*

Sect. 4.

Wray, 4 Bro. C. C. 483, the exercise of the power by the will of the married woman seems to have been held to let in a bond creditor against the appointees under the will ; and in *Hughes v. Wells*, 9 Hare 749, I seem to have intimated that this might be the effect of the exercise of the power, as in other cases of the exercise of the general power of appointment by will, and certainly not upon the ground that power is property. But KINDERSLEY, V.C., in whose judgment I have quite as much confidence as in my own, seems to have dissented from *Hughes v. Wells* in the case of *Vaughan v. Vanderstegen*, 2 Drew. 165, and I observe that Sir WILLIAM GRANT has treated this point as doubtful in *Heatley v. Thomas*, 15 Ves. 596. I say no more, therefore, upon the point than that it may be considered as open. But in cases falling under the first class, where the power of appointment has been by deed or writing or will, the courts have certainly held the corpus of the property to be subject to the debts and engagements of the married woman."

In *Mayd v. Field*, 3 Ch. D. 587, personal property was settled on the marriage of C. W. in trust as she should during coverture by deed or will appoint, and subject thereto for her separate use for life, and, if she survived her husband (which happened) for her absolutely ; and it was held to be bound by her general engagements.

Property was settled on a married woman for her separate use for life with remainder for such persons as she should by her will appoint, with remainder in default of appointment, for her children or her next of kin, and the married woman made a testamentary appointment in favour of her daughter. It was held that the appointed property was subject to her general engagements. Referring to *The London Chartered Bank of Australia v. Lempriere*, *supra*, HALL, V.C., said—"The court in that case considered that the married woman was capable of dealing with the pro-

Sect. 4.

perty, although only by a testamentary instrument, and that she was in the same position as a man ; and as in the case of a man, the property, over which he can and does exercise a power of appointment, will become liable to his debts, so a married woman having such a power must be treated as if she were a man—that is as a person not under disability ; and then it follows that property given by her under a power becomes subject to the payment of her debts in preference to the interest in it of the appointees. It may be said, perhaps, that it was a strong and arbitrary thing to so decide, even in the case of a man, as the property was not in the first instance his own, and he could only appoint it ; but the courts held, with a strong arm, that inasmuch as he might make it liable to the payment of his debts he should be deemed to have done so—*i.e.*, to be just before being generous.” (*In re Harvey's estate, Godfrey v. Harben*, 13 Ch. D. 216.) Referring to this decision, COTTON, L.J., in *Pike v. Fitzgibbon*, 17 Ch. D. at p. 466, said—“That case went very much further than the case it was supposed to follow. As I understand that case, the decision was that the power of appointment by will connected with the separate life estate when exercised made the appointed property separate property. In the case of *The London Chartered Bank of Australia v. Lampriere* there was power to appoint by deed or will, which makes a great difference between that case and the case before Vice-Chancellor HALL.” All doubt is, however, now removed by the above section, which will apply to every execution of a general power by will by a married woman after the 1st January, 1883.

5. Every woman married before the commencement of this Act (a) shall be entitled to have and to hold and to dispose of in manner aforesaid as her separate property all real and

personal property, her title to which, whether Sect. 5.
vested or contingent, and whether in possession,
reversion, or remainder, shall accrue (b) after the
commencement of this Act, including any wages,
earnings, money, and property so gained or
acquired by her as aforesaid.

(a) BEFORE THE COMMENCEMENT OF THIS ACT.

Before the commencement of this Act—i.e., before
1st January, 1883. As to women married after that
date, see sect. 2, *ante*.

With regard to women to whom this section applies,
a distinction must be drawn between those married
before the Act of 1870 came into operation and those
married after that date (9th August, 1870). That Act
protected the wages and earnings of all married women
whether married before or after 1870, but two of the
most important sections of that Act (the 7th and 8th)
applied only to women married after the passing of
the Act. Women, therefore, who were married before
1870 could only acquire separate property by settle-
ment, gift, or bequest, and after 1870 by their wages or
earnings as protected by that Act. Personalty coming
to them would have belonged to their husbands sub-
ject to their equity to a settlement, and their husbands
would have taken that estate in lands descending to
them which the common law conferred upon a hus-
band. Women married after the 9th August, 1870,
were entitled to the full benefit of the Act, and might
acquire separate estate as provided by the Act of that
year.

The above section (and see sect. 22, *post*) does not
affect any property which may have come to a married
woman before the 1st January, 1883, and the question
whether such property is to be regarded as separate

Sect. 5. Before the commencement of this Act—*continued.*

will not depend in any way upon this Act, but must be decided as if this Act had not passed.

(b) HER TITLE TO WHICH SHALL ACCRUE.

These words may occasion much difficulty when it is sought to apply them to particular cases. For example, if a married woman under an instrument executed before January 1st, 1883, takes a future interest, say after a life estate, her title would seem to have accrued at the date of the execution of the instrument, though the interest might not become vested until long after 1883. If so, then it would not be separate estate under this section.

As to
stock, etc.,
to which a
married
woman is
entitled.

6. All deposits (a) in any post office or other savings bank, or in any other bank, all annuities granted by the Commissioners for the Reduction of the National Debt or by any other person, and all sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Governor and Company of the Bank of England, or of any other bank, which at the commencement of this Act are standing in the sole name of a married woman, and all shares, stock, debentures, debenture stock, or other interests of or in any corporation, company, or public body, municipal, commercial, or otherwise, or of or in any industrial, provident, friendly, benefit, building, or loan society, which at the commencement of this Act are standing in

her name (b), shall be deemed, unless and until Sect. 6. the contrary be shown (c), to be the separate property of such married woman; and the fact that any such deposit, annuity, sum forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Governor and Company of the Bank of England or of any other bank, share, stock, debenture, debenture stock, or other interest as aforesaid, is standing in the sole name of a married woman, shall be sufficient *prima facie* evidence that she is beneficially entitled thereto for her separate use, so as to authorize and empower her to receive or transfer the same, and to receive the dividends, interest, and profits thereof, without the concurrence of her husband (d), and to indemnify (e) the Postmaster-General, the Commissioners for the Reduction of the National Debt, the Governor and Company of the Bank of England, the Governor and Company of the Bank of Ireland, and all directors, managers, and trustees of every such bank, corporation, company, public body, or society as aforesaid, in respect thereof.

(a) ALL DEPOSITS, ETC.

The property which is by this section declared to be the separate property of a married woman includes any money which may on the 1st January, 1883, be standing in her name, stocks, shares, debentures of every description, and interests of every kind in any

Sect. 6. All deposits, etc.—*continued.*

industrial, etc., society. The section seems to include every species of property of this kind, and is not limited to specified deposits, shares, or interests, as was the case with sects. 2, 4, and 5 of the Act of 1870, which it replaces.

(b) STANDING IN HER NAME.

Formerly a married woman might become a shareholder in a company so as to bind her separate estate, if the contract was entered into in respect of her separate estate and the deed of settlement of the company did not prohibit a married woman from being a shareholder. She might be placed upon the list of contributories (*Mrs. Matthewman's case*, L. R. 3 Eq. 781), unless the investment was made in her name without her knowledge, in which case the person really investing was the contributory. (*In re The Hercules Insurance Company*, L. R. 13 Eq. 566.) But, as a general rule, a husband was liable to be placed on the list of contributories in respect of his wife's shares even when they were settled to her separate use, though his liability was confined to losses incurred during the coverture. (See the cases collected in Buckley on the Companies Acts, 3rd Edit., p. 66.) And it was held that the Married Women's Property Act, 1870, made no difference as to this liability. Thus a woman being entitled absolutely to shares in a company married in 1878, and before the marriage the shares were settled for her own benefit. On the winding-up of the company it was held that the liability of the husband to contribute to the assets of the company was not limited by the Married Women's Property Act, 1874, to the interest acquired in the right of his wife, but that he was liable as a contributory in his own right under the 78th section of the Companies Act, 1862. (*Ex parte Hatcher*, 12 Ch. D. 284.) The husband will still con-

Standing in her name—*continued.*

Sect. 6.

tinue liable to be a contributory in respect of her shares, subject to the presumption which renders her separate estate primarily liable (sect. 1, sub-sect. 3) and subject to the provisions of ss. 13 & 14, *post*, as to ante-nuptial liabilities. But this observation must be taken to apply only to shares within this section, see note (a) *ante*.

(c) UNTIL THE CONTRARY BE SHOWN.

The burden of proof will be upon the person who alleges that the stock, etc., is not separate property. This section applies only to women married before the 1st January, 1883, and the question whether such money, stock, shares, etc., are or are not separate estate, will depend upon considerations already referred to. (See p. 37, *ante*.) For example, if the property consisted of £100 in the funds standing in the name of a married woman, it might be shown not to be separate estate by proving that it was a bequest, or that it came to her as next of kin to an intestate, and that the woman was married before 1870, so that she had not the protection of sect. 7 of the Act of 1870. Or it might be shown that the money consisted of money of the husband invested without his consent, in which case it would be the husband's property, as provided by sects. 2, 3, 4, and 5 of the same Act. Or it might be shown to be moneys of the husband deposited in fraud of his creditors, and therefore capable of being followed as if the Act of 1870 had not passed. (See sect. 6 of the Act of 1870 and sect. 10 of this Act, *post*.) And generally it may be shown that the stock, etc., came to the woman or was acquired by her out of moneys which came to her under such circumstances that they are not separate estate.

(d) WITHOUT THE CONCURRENCE OF HER HUSBAND.

Before the Act of 1870 a company would have had a right to refuse to register a transfer of stock by the

Sect. 6. Without the concurrence of her husband—*continued.*

wife without the husband's concurrence. But under sect. 4 of that Act they were bound to investigate her title and to register the stock in her name if she were entitled. (*Reg. v. The Carnatic Company (Limited)*, L. R. 8 Q. B. 299.) Sects. 3 and 4 of the Act of 1870 as to the right of a married woman to require registration in her own name are not re-enacted in the present statute, presumably because, having regard to sects. (sub-sect. (2)) 6 and 7 of this Act the provision was unnecessary. The decision in *Howard v. The Bank of England*, L. R. 19 Eq. 295, has therefore no longer any application.

(e) TO INDEMNIFY.

The effect of this provision appears to be that unless it be shown that property falling within the terms of this section is not the separate property of a married woman, she may require it to be given up to her or transferred to her nominees, and she may require payment of the dividends and interest upon it without any question as to her title. Any such payment or transfer which may be made without notice that the property is not separate property will not entail any liability on the part of the persons paying or transferring it according to her instructions.

As to
stock, etc.,
to be
transferred
etc., to a
married
woman.

7. All sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England or of any other bank, and all such deposits and annuities respectively as are mentioned in the last preceding section, and all shares, stock debentures, debenture stock, and other interests of or in any such corporation, company, public

body, or society as aforesaid, which after the Sect. 7. commencement of this Act (a) shall be allotted to or placed, registered, or transferred in or into or made to stand in the sole name of any married woman shall be deemed, unless and until the contrary be shown, to be her separate property, in respect of which so far as any liability may be incident thereto her separate estate shall alone be liable (b), whether the same shall be so expressed (c) in the document whereby her title to the same is created or certified, or in the books or register wherein her title is entered or recorded or not.

Provided always, that nothing in this Act shall require or authorize any corporation or joint stock company to admit any married woman to be a holder of any shares or stock therein to which any liability may be incident, contrary to the provisions of any Act of parliament, charter, bye-law, articles of association, or deed of settlement regulating such corporation or company (d).

a) AFTER THE COMMENCEMENT OF THIS ACT.

The preceding section applies only to women married before the 1st January, 1883, who have property standing in their names on that date. The present section applies to all married women, whether married before or after that date, and applies to all property of the kind specified which may thereafter be

Sect. 7. After the commencement of this Act—*continued.*

allotted to or placed, registered or transferred in or into, or made to stand in the name of a married woman. All such property is to be deemed separate property until the contrary is shown. As to how the contrary may be shown, see the note to sect. 6, *ante*.

(b) HER SEPARATE ESTATE SHALL ALONE BE LIABLE.

This provision seems to free a husband from all liability in respect of shares, etc., which are within this section (see note (a), *ante*).

See note to sect. 6, *ante*, and the notes to sects. 13. and 14 on the liability of a husband to be a contributory in respect of his wife's shares acquired before the passing of the Act respectively, or standing in her name on January 1st, 1883.

(c) WHETHER THE SAME SHALL BE SO EXPRESSED.

That is, whether the property is registered, etc., as separate property. In other words, property standing in the name of a married woman is to be deemed her separate property without its appearing that she is married, or that the property is held as her separate estate.

(d) PROVIDED, ETC.

Such provisions are common in articles of association. (See Palmer's Company Precedents, p. 104, and sect. 78 of the Companies Act, 1862.)

Invest-
ments in
joint
names of
married
women
and others.

8. All the provisions hereinbefore contained as to deposits in any post office or other savings bank, or in any other bank, annuities granted by the Commissioners for the Reduction of the National Debt or by any other person, sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the

books of the Bank of England or of any other bank, shares, stock, debentures, debenture stock, or other interests of or in any such corporation, company, public body, or society as aforesaid respectively, which at the commencement of this Act shall be standing in the sole name of a married woman, or which, after that time, shall be allotted to, or placed, registered, or transferred to or into, or made to stand in the sole name of a married woman, shall respectively extend and apply, so far as relates to the estate, right, title, or interest of the married woman, to any of the particulars aforesaid which, at the commencement of this Act, or at any time afterwards, shall be standing in, or shall be allotted to, placed, registered, or transferred to or into, or made to stand in, the name of any married woman jointly with any persons or person other than her husband. Sect. 8.

The effect of the above section is shortly this: sect. 6 provided for the case of married women married before the 1st January, 1883, who on that date had money, shares, etc., then standing in their sole names. This section extends the provisions of sect. 6 to the case of any such property standing at the date just mentioned in the name of a married woman jointly with others. So far therefore as the interest of the married woman in such property is concerned, such interest is to be deemed her separate property until the contrary is shown, and she may deal with it as if she were unmarried. The only limit to her

Sect. 8.

power of dealing with such property would arise out of the fact of the joint holding. (As to the law on this point under the Act of 1870, see *Howard v. The Bank of England*, L. R. 19 Eq. 295.) The provisions of sect. 7 are extended to joint holdings in a similar manner. It will be observed that the section does not apply to a joint holding with the husband.

As to
stock, etc.,
standing
in the
joint
names of a
married
woman
and others.

9. It shall not be necessary for the husband of any married woman, in respect of her interest, to join in the transfer of any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society as aforesaid, which is now or shall at any time hereafter be standing in the sole name of any married woman, or in the joint names of such married woman and any other person or persons not being her husband.

The marginal note does not state quite correctly the effect of the section, for the section relates to stock, etc., which is now (*i.e.*, on January 1st, 1883) or may be thereafter standing in the sole name of a married woman, as well as to stock, etc., which is now or may be hereafter standing in the joint names of a married woman and others. The provisions of this section therefore apply not only to stock, etc., standing in the joint names of a married woman and others under sect. 8, but to stock, etc., which may on January 1st,

1883, be standing in the name of a married woman, and which is provided for by sect. 6, and to stock, etc., which may after January 1st, 1883, be transferred to or be placed in her name. The marginal note forms no part of the section, and does not control it. (See *The Attorney-General v. The Great Eastern Railway*, 11 Ch. D. pp. 461, 465, when the Court of Appeal refused to follow the decision of JESSEL, M.R., in *Re Venour's Settled Estates*, 2 Ch. D. at p. 525; see also *Birtwhistle v. Vardill*, 7 Cl. & Fin. at p. 929, per TINDAL, C.J.; and *Claydon v. Green*, L. R. 3 C. P. at p. 522, per WILLES, J.)

Sect. 9.

The above section requires no explanation. It simply provides that when stock, etc., is standing in the sole name of a married woman, or in her name jointly with others, so as to be her separate property under sects. 6, 7, and 8, it shall not be necessary for the husband to join in order to enable her to transfer her interest. In some cases the concurrence of the husband was necessary before the Act. (See *ante*, note (a) to sect. 6.)

10. If any investment (a) in any such deposit or annuity as aforesaid, or in any of the public stocks or funds, or in any other stocks or funds transferable as aforesaid, or in any share, stock, debenture, or debenture stock of any corporation, company, or public body, municipal, commercial, or otherwise, or in any share, debenture, benefit, right, or claim whatsoever in, to, or upon the funds of any industrial, provident, friendly, benefit, building, or loan society, shall have been made by a married woman by means of moneys of her husband, without his con-

Fraudulent investments with money of husband.

Sect. 10. sent (b), the court may, upon an application under section seventeen (c) of this Act, order such investment, and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband ; and nothing in this Act contained shall give validity as against creditors of the husband to any gift, by a husband to his wife, of any property, which, after such gift, shall continue to be in the order and disposition or reputed ownership of the husband (d), or to any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors ; but any moneys so deposited or invested may be followed as if this Act had not passed.

(a) ANY INVESTMENT.

That is, in property to which sects. 6, 7, and 8 relate.

(b) WITHOUT HIS CONSENT.

The effect of this provision is to deprive the husband of any power to obtain the transfer or payment to him of any investment which his wife may previously have made in her own name with his consent. This creates an important change in the law. Formerly a husband might have given property to the separate use of his wife ; but in order that the gift should be valid, it was necessary that there should have been a gift to trustees for her separate use, or some act from which it clearly appeared that the husband divested himself of the property and engaged

Without his consent—*continued*.

Sect. 10.
—

to hold it as trustee for her. (*Mews v. Mews*, 15 Beav. 529; *Byam v. Byam*, 19 Beav. 58; *Grant v. Grant*, 34 Beav. 623; *Barrack v. McCulloch*, 3 K. & J. 110; *Re Gadbury*, 11 W. R. 895; *Lloyd v. Pughe*, L. R. 8 Ch. 88; *In re Breton's Estate*, 17 Ch. D. 416.) But after the passing of this Act any investment made by a husband in the name of his wife, or permitted by him to be made by her with his money, will be her separate property at least as between the husband and wife, and he will not be able to obtain the transfer or repayment of it to him.

(c) AN APPLICATION UNDER SECT. 17.

That is, in England by summons to a judge of the High Court or to the judge of the county court of the district. (See the section and the notes thereto, *post*.)

(d) IN THE ORDER AND DISPOSITION OF THE HUSBAND.

The Bankruptcy Act, 1869, s. 15, provides that the property of a bankrupt divisible among his creditors shall include "all goods and chattels being at the commencement of the bankruptcy in the possession, order, or disposition of the bankrupt, being a trader, by the consent and permission of the true owner, of which goods and chattels the bankrupt is reputed owner, or of which he has taken upon himself the sale or disposition as owner; but things in action other than debts due to him in the course of his trade and business are not to be deemed goods and chattels within the meaning of the clause. Referring to a similar clause in an old Bankruptcy Act, Lord REDFORD, in *Joy v. Campbell*, 1 Sch. & Lef. 336, thus explained its effect—"The clause refers to chattels in the possession of the bankrupt, in his order and disposition, with the consent of the true owner. That means when the possession, order, and disposition is

Sect. 10. In the order and disposition of the husband—*continued.*

in a person who is not the owner, to whom they do not properly belong, and who ought not to have them, but whom the owner permits, unconsciously as the Act supposes, to have such order and disposition. The object was to prevent deceit by a trader from the visible possession of property to which he was not entitled. But in the construction of the Act the nature of the possession has always been considered, and the words have been construed to mean possession of the goods of another with consent of the true owner." It is not possible in the limited space here at disposal to state in detail the effect of the numerous decisions which have been given on the subject of reputed ownership under the above section of the Bankruptcy Act, 1869. The reader must therefore refer to Robson on Bankruptcy, 4th Edit. p. 480, where the law is fully stated. It is to be observed that while the section of the Bankruptcy Act applies only to traders, and then only in the event of their bankruptcy, the above section of the Married Women's Property Act contains no such limitations. Any gift by a husband to his wife may therefore be taken in execution by creditors, if the subject-matter of the gift continues in the order and disposition or reputed ownership of the husband, and that whether he is a trader or not. And as property in this Act includes things in action, the section is in this respect also wider in its application than the Bankruptcy Act, 1869, s. 15.

(e) IN FRAUD OF CREDITORS.

The 13 Eliz. c. 5, provided that all feoffments, gifts, etc., of lands or goods made to delay, hinder, or defraud creditors should be utterly void. But such feoffments, gifts, etc., are only void as against creditors; they are valid as against the parties

In fraud of creditors—*continued*.

Sect. 10.

making them or their privies, and as against strangers other than creditors or *bond fide* purchasers for valuable consideration. The question of fraud under this statute is always one of fact. The effect of this statute was thus stated by Lord WESTBURY in *Spiro v. Willows*, 34 L. J. Ch. 367—"There is some inconsistency in the decided cases on the subject of conveyances in fraud of creditors, but I think the following conclusions are well founded. If the debt of the creditor by whom the voluntary settlement is impeached existed at the date of the settlement, and it is shown that the remedy of the creditor is defeated or delayed by the existence of the settlement, it is immaterial whether the debtor was or was not solvent after making the settlement. But if a voluntary settlement or deed of gift be impeached by subsequent creditors whose debts had not been contracted at the date of the settlement, then it is necessary to show either that the settlor made the settlement with express intent to 'delay, hinder, or defraud creditors,' or that after the settlement the settlor had no sufficient means or reasonable expectations of being able to pay his then existing debts; that is to say, was reduced to a state of insolvency, in which case the law infers that the settlement was made with intent to delay, hinder, or defraud creditors, and is therefore fraudulent and void. It is obvious that the fact of a voluntary settlor retaining money enough to pay the debts which he owes at the time of making the settlement, but not actually paying them, cannot give a different character to the settlement, or take it out of the statute. It still remains a voluntary alienation or deed of gift whereby, in the event, the remedies of creditors whose debts existed at the time are delayed, hindered, or defrauded." (And see the cases decided with reference to the statute in the notes to *Twyne's Case*, 1 Sm. L. C. 1.)

Sect. 10. In fraud of creditors—*continued.*

The Bankruptcy Act, 1869, s. 91, provides that "any settlement of property made by a trader (not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife) shall, if the settler becomes bankrupt within two years after the date of such settlement, be void as against the trustee of the bankrupt appointed under this Act, and shall, if the settler becomes bankrupt at any subsequent time within ten years after the date of such settlement, unless the parties claiming under such settlement can prove that the settler was at the time of making the settlement able to pay all his debts without the aid of the property comprised in such settlement, be void against such trustee. Any covenant or contract made by a trader in consideration of marriage for the future settlement upon or for his wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property of or in right of his wife, shall upon his becoming bankrupt, before such money or property has been actually transferred or paid pursuant to such contract or covenant, be void against the trustee appointed under this Act." The operation of this section is of course confined to traders who become bankrupt; and it will be observed that a settlement may be avoided under it irrespective of any intention to defraud. All settlements not within this section as having been made by persons other than traders, or who have not become bankrupt within the specified periods, are governed by the 13 Eliz. c. 5, already mentioned. The Married

In fraud of creditors—*continued*.

Sect. 10.

Women's Property Act, 1882, does not extend the operation of the 13 Eliz. c. 5.

It is to be noticed that sect. 10 applies only to post-nuptial gifts. Settlements made before marriage, if *bond fide*, are not affected by this Act (see sect. 19, *post*), nor are they affected by the statute of Elizabeth. Marriage is a valuable consideration, and is sufficient to support a pre-nuptial settlement even when there is fraud on the part of the husband, provided the wife is no party to such fraud. (Per JESSEL, M.R., in *Kewan v. Crawford*, 6 Ch. D. at p. 39.) But when a man executed an ante-nuptial settlement and married a woman with whom he had previously cohabited, with intent to defraud his creditors, the wife being implicated in the transaction, it was held by MALINS, V.-C., following *Columbine v. Penhall*, 1 Sm. & G. 228, that the settlement was fraudulent and void as against creditors. (*Bulmer v. Hunter*, L. R. 8 Eq. 46.)

(f) AS IF THIS ACT HAD NOT PASSED.

In the event of the bankruptcy of the husband, therefore, not only will sect. 91 of the Bankruptcy Act (*ante*) apply, but any gift or settlement may be impeached under the 13 Eliz. c. 5; and the last-mentioned Act will avoid all fraudulent settlements, so that in cases where there is no bankruptcy, a creditor will be able to obtain execution against the property settled in fraud of creditors.

11. A married woman may by virtue of the power of making contracts hereinbefore contained (a) effect a policy upon her own life or the life of her husband (b) for her separate use; Moneys payable under policy of assurance not to

Sect. 11. and the same and all benefit thereof shall enure accordingly (c).

form part
of estate
of the
insured.

A policy of assurance effected by any man on his own life, and expressed (d) to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed (d) to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured (e) or be subject to his or her debts: Provided, that if it shall be proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the moneys payable under the policy, a sum equal to the premiums so paid (f). The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy. In default of

any such appointment of a trustee, such policy, Sect. 11. immediately on its being effected, shall vest in the insured and his or her legal personal representatives, in trust for the purposes aforesaid (*g*). If, at the time of the death of the insured, or at any time afterwards, there shall be no trustee, or it shall be expedient to appoint a new trustee or new trustees, a trustee or trustees or a new trustee or new trustees may be appointed by any court having jurisdiction under the provisions of the Trustee Act, 1850, or the Acts amending and extending the same (*h*). The receipt of a trustee or trustees duly appointed, or, in default of any such appointment, or in default of notice to the insurance office, the receipt of the legal personal representative of the insured shall be a discharge to the office for the sum secured by the policy, or for the value thereof, in whole or in part (*i*).

13 & 14
Vict. c.
60.

(a) **HEREINBEFORE CONTAINED.**

That is, in sect. 1, sub-sect. (2).

(b) **UPON HER OWN LIFE OR THE LIFE OF HER HUSBAND.**

This power was given by the Married Women's Property Act, 1870, s. 10. A married woman always had an insurable interest in the life of her husband. (*Reed v. The Royal Exchange Assurance Company*, Peake Ad. Ca. 70.)

(c) **ACCORDINGLY.**

That is, shall be regarded in all respects as separate property of the wife.

Sect. 11. (d) EXPRESSED.

The Act of 1870 required the trust to be expressed "on the face" of the policy. These words are here omitted, but it is difficult to suggest where the trust is to be *expressed*, if not on the face of the policy.

(e) THE ESTATE OF THE INSURED.

It was held in *Holt v. Everett*, 2 Ch. D. 266, that a similar provision in the Act of 1870 modified sect. 91 of the Bankruptcy Act, 1869 (which see *ante*, p. 52). There a husband who before the passing of the Married Women's Property Act, 1870, had insured his life, and had paid one premium on the insurance after the passing of the Act, gave up the policy, and received instead a policy at the same premium for a sum payable to the separate use of his wife if she survived him, and to him if he survived her. He was at the time in embarrassed circumstances, and soon afterwards came under liquidation by arrangement and then died. It was held that the insurance *must* be taken as effected after the passing of the Act, and that whether the subsequent premiums were paid by the husband out of his own money, or out of the income of the wife's separate estate, the money payable on the insurance did not go to the trustee, but went to the widow by virtue of the Act, which modified sect. 91 of the Bankruptcy Act, 1869. "The legislature intended to alter the law, and to say that the creditors could only get what they would fairly be entitled to, namely, that premiums paid in fraud of them should be repaid to them out of the money payable under the policy."

(f) THE PREMIUMS SO PAID.

The *cestui que* trust is not therefore deprived altogether of the benefit of the insurance, even when the

The premiums so paid—*continued*.

Sect. 11.

premiums have been paid in fraud of creditors. The creditors are only entitled out of the moneys payable under the policy to receive a sum equal to the premiums so paid. See *Holt v. Everall*, *supra*.

(g) IN TRUST FOR THE PURPOSES AFORESAID.

In a recent case a husband had effected a policy for the benefit of his wife and children under the Married Women's Property Act. The husband died insolvent, and the wife being in poor circumstances, so that the income of the policy moneys was not sufficient to support her and the children, the moneys were distributed as if the husband had died intestate. (*In re Mellor's Policy Trusts*, 7 Ch. D. 200.)

(h) APPOINTMENT OF TRUSTEES.

The 13 & 14 Vict. c. 60, amended by the 15 & 16 Vict. c. 55, provides shortly as follows. The Court of Chancery (now the Chancery Division) may, whenever it is inexpedient, difficult, or impracticable to do so without the assistance of the court, appoint a new trustee or trustees either in substitution for or in addition to any existing trustee or trustees, or whether there be any existing trustee or not at the date of the order. A new trustee may be appointed in place of one convicted of felony, or when a trustee is an infant or lunatic, or is out of the jurisdiction of the court or cannot be found, or where he refuses to sue for or recover any chose in action (*e.g.*) the amount due on a policy of insurance. By sect. 117 of the Bankruptcy Act, 1869, when a bankrupt is a trustee within the Trustee Act, 1850, the court may appoint a trustee in his place if it is expedient to do so. The county courts have jurisdiction under the Trustee Acts when the trust estate or fund to which the proceeding relates does not exceed £500. (28 & 29 Vict. c. 99,

Sect. 11. Appointment of trustees—*continued.*

s. 1, sub-sect. 5.) Proceedings in the county court must be taken within the district where the person making the application resides. (*Ib.* sect. 10, sub-sect. 2.) The application may be made by any person beneficially interested, whether under disability or not, or by any duly appointed trustee. (13 & 14 Vict. c. 60, s. 37.) As to proceeding by petition, see sects. 40—42, and *Thomas v. Beavan*, 18 Beav. 521. For further information on these Acts the reader is referred to a concise collection of the decided cases in 6 Chitty's Statutes, 4th Edit. by Lely, pp. 699—718; Lewin on Trusts, p. 865; and Daniell's Chancery Practice.

(i) A DISCHARGE TO THE OFFICE.

This may be given by a trustee or trustees duly appointed under this section. If no such appointment has been made, and no notice of a claim by any assignee or other person entitled has been made, a discharge may be given by the legal personal representative of the insured, who is by this section declared to be a trustee in default of the appointment of any other. As to the assignment of policies, the notice necessary to be given to the office, and the effect of such notice, see Bunyon on Life Insurance, Part II. Ch. 1.

Remedies
of married
woman for
protection
and secu-
rity of
separate
property.

12. Every woman, whether married before or after this Act, shall have in her own name (a) against all persons whomsoever, including her husband (b), the same civil remedies (c), and also (subject, as regards her husband, to the proviso herein-after contained) the same remedies and redress by way of criminal proceedings, for the

protection and security of her own separate pro- Sect. 12-
 perty (*d*), as if such property belonged to her as
 a *feme sole* (*e*), but, except as aforesaid, no hus-
 band or wife shall be entitled to sue the other for
 a tort (*f*). In any indictment or other proceeding
 under this section it shall be sufficient to allege
 such property to be her property (*g*); and in any pro-
 ceeding under this section a husband or wife shall
 be competent to give evidence against each other (*h*),
 any statute or rule of law to the contrary not-
 withstanding : Provided always, that no criminal
 proceeding shall be taken by any wife against her
 husband by virtue of this Act while they are living
 together, as to or concerning any property claimed
 by her, nor while they are living apart, as to or
 concerning any act done by the husband while
 they were living together (*i*), concerning property
 claimed by the wife, unless such property shall
 have been wrongfully taken by the husband when
 leaving or deserting (*k*), or about to leave or
 desert (*l*), his wife.

(a) IN HER OWN NAME.

See *ante*, p. 18, Note (*e*). In *re Fishers Trusts*, 45
 L. T. (N.S.) 504, it was held that a married woman's
 petition for payment out of court of money belonging
 to her as separate estate, was a remedy for the protec-
 tion of her property within the corresponding section
 of the Act of 1870, and might be presented to the
 court by her without a next friend. In *Moore v. Robin-*
son, 27 W. R. 312, a married woman living apart from

Sect. 12. In her own name—*continued.*

her husband, invested her personal earnings in the lease, goodwill, and fixtures of a beer-house. Having been wrongfully expelled by the lessor, she brought an action for damages for the expulsion. It was held that she was entitled to maintain the action in her own name, for that it was a remedy for the protection of her property within the meaning of the Act of 1870.

(b) INCLUDING HER HUSBAND.

It is to be observed that the remedies given to a married woman under this section are limited by the phrase "*for the protection and security of her separate property.*" In the cases cited, *ante*, pp. 6, 18, and Note (a), the remedies were all in respect of separate estate. It follows, therefore, that a wife cannot sue her husband except for the protection and security of her separate property, the law remaining as before the Act except in this respect. In *Phillips v. Barnett*, 1 Q. B. D. 436, it was held that a wife who had been divorced could not sue her husband for an assault which had been committed during the coverture; for the divorce merely terminated the relation of husband and wife from the date when it was pronounced, and before that date she could not sue her husband, being in law one person with him. And this section provides that except in respect of separate property, no husband or wife shall be entitled to sue the other for a tort.

A wife may, however, bring an action against her husband to prevent his interference with her separate estate (*Wood v. Wood*, *ante*, p. 6). She may also sue him for wrongfully converting or detaining it, and probably also for slander or libel, spoken or written, respecting her in the exercise of any separate occupation. (See per COCKBURN, C.J., in *Ramsden v. Brearley*, L. R. 10 Q. B. 147). She may also sue him on any contract connected with her separate estate such as a loan.

(c) CIVIL REMEDIES.

Sect. 12.

These are by action at law with all its consequences of execution and proceedings under the Debtors Act by judgment summons. Bankruptcy proceedings are also, it is submitted, civil remedies. Other examples of civil remedies are given in the cases cited above (see p. 6, Note (b); and Note (a), *supra*).

(d) FOR THE PROTECTION OF HER SEPARATE PROPERTY.

This qualifies the rights given by the section. (See Note (b), *supra*.)

(e) AS A FEME SOLE.

See p. 18, Note (e).

(f) FOR A TORT.

A husband never could, nor can he now sue his wife for a tort. And as already stated the right of a wife to sue her husband for a tort, is limited to cases when it is necessary for the protection of her separate estate.

(g) HER PROPERTY.

Formerly if the person named in an indictment as owner was a married woman, unless there had been a judicial separation or a protection order, or the property was separate estate within the Married Women's Property Act, 1870, the defendant was entitled to be acquitted, for in law the goods were the property of the husband. And this was the case even when she was living apart from him on an income arising from property vested in trustees for her separate use. (Archbold's Criminal Law, p. 355; *R. v. French*, R. & R. 491; *R. v. Wilford*, *ib.* 517.) By virtue of this section the property may be alleged to be that of a married woman.

Sect. 12. (h) AGAINST EACH OTHER.

Since the passing of the 16 & 17 Vict. c. 83, a husband or wife has been a competent witness in all civil proceedings by or against the other. But by section 2 of that Act, nothing in that Act is to render a husband competent or compellable to give evidence for or against his wife, nor any wife for or against her husband in any criminal proceeding. Before the Act husband and wife were incompetent witnesses for or against each other in criminal proceedings, except in a few cases of which the most important was a personal injury to the wife, in proceedings for which she was a competent witness for the prosecution (Archbold, p. 305). Husband and wife may now give evidence in criminal proceedings under this section. That is to say, a wife may give evidence against her husband in a proceeding at her instance under this section ; but the husband is not rendered a competent witness by this section, when he is incompetent not merely as a husband, but also as a defendant, for the following words, "against each other," seem to imply that they are only to be competent when giving evidence for the prosecution, and "under this section" a wife only can be prosecutrix. *Sed quære.*

(i) WHILE THEY WERE LIVING TOGETHER.

It is to be observed that this proviso applies only to criminal proceedings, and then only when the act complained of happened after husband and wife have separated. The proviso is also confined to criminal proceedings concerning property claimed by the wife ; so that the right of a wife to take criminal proceedings against her husband for other matters, such as personal injuries inflicted by him during the coverture, is not affected by this section.

(k) LEAVING OR DESERTING HIS WIFE.

Sect. 12.

"Leaving" means something more than "desertion." In *Ward v. Ward*, 27 L. J. P. & M. 63, COCKBURN, C.J., said—"The word *desertion* necessarily implies that the Act relied upon as such is done contrary to the will of the person charging it." And Sir Cresswell CRESSWELL added—"You must not assume that the fact of separation is conclusive proof of desertion." In *Thompson v. Thompson*, 27 L. J. P. & M. 65, the latter judge said—"Without attempting to define desertion so as to meet all possible cases, I think it clear that to constitute desertion by the husband, it must be shown that he has wilfully absented himself from the society of his wife and in spite of her wish, she not being a consenting party." No one can desert who does not actually and wilfully bring to an end an existing state of cohabitation. (*Fitzgerald v. Fitzgerald*, L. R. 1 P. & D. 694; *Keech v. Keech*, *ib.* at p. 641.) As to desertion within the meaning of the 24 & 25 Vict. c. 55. s. 3, see *Reg. v. Maidstone Union*, 5 Q. B. D. 31; *Reg. v. Cookham Union*, 9 Q. B. D. 522. There may therefore be a *leaving* of the wife within this section which does not amount to desertion.

(l) ABOUT TO LEAVE OR DESERT.

This clause will enable a wife to institute criminal proceedings before the desertion has actually taken place. If she could not do so until after he had gone, her remedy might be a barren one. It will, of course, be a question of fact whether the husband is about to leave or desert his wife, and it will be difficult to prove. His intention may be referred from his statements, writings, and conduct, for example, in taking a berth for the purpose of going abroad, or the like.

Sect. 13.

Wife's
ante-nup-
tial debts
and lia-
bilities.

13. A woman after her marriage shall continue to be liable (a) in respect and to the extent of her separate property (b) for all debts contracted (c), and all contracts entered into or wrongs committed (d) by her before her marriage, including any sums for which she may be liable as a contributory (e), either before or after she has been placed on the list of contributories, under and by virtue of the Acts relating to joint stock companies; and she may be sued (f) for any such debt and for any liability in damages or otherwise under any such contract, or in respect of any such wrong; and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her separate property (g); and, as between her and her husband, unless there be any contract between them to the contrary, her separate property shall be deemed to be primarily liable (h) for all such debts, contracts, or wrongs, and for all damages or costs recovered in respect thereof: Provided always, that nothing in this Act shall operate to increase or diminish the liability of any woman married before the commencement of this Act (i) for any such debt, contract, or wrong, as aforesaid, except as to any separate property to which she may become entitled by virtue of this Act, and to which she would not have been entitled for her separate

use under the Acts hereby repealed or otherwise, Sect. 13.
if this Act had not passed.

(a) CONTINUE TO BE LIABLE.

The law down to 1870 was thus stated by MALINS, V.C., in *Chubb v. Stretch*, L. R. 9 Eq. at p. 559—"The law as to the liability of a husband for the debt of his wife contracted before marriage proceeds upon this principle, that as by the common law, the husband takes all the property of the wife, he is liable for her debts. But the husband and wife must be sued jointly for the wife's debt, and if no action is brought during the coverture and the wife survives, she remains just as liable for the debt as she was before the marriage; but if an action is brought and judgment recovered against husband and wife during the coverture, and if the husband becomes bankrupt, and obtains his discharge, I am bound to assume from the authorities that the liability of the husband and of the wife for the wife's debt is gone at law." But it was held in that case that her separate property was liable to satisfy such debts.

Section 12 of the Act of 1870 provided that a husband should not, by reason of any marriage after the 9th August in that year, be liable for the debts of his wife contracted before marriage, but the wife was to be liable to be sued for, and any property belonging to her for her separate use was to be liable to satisfy such debts as if she had continued unmarried. This section did not apply to a woman married before the passing of the Act; the liability of the husband in such a case remained as it was before. But in cases when it did apply, the Act altogether took away the liability of the husband, even when he had received property with his wife. Her liability to be sued, however, continued as if she were unmarried (see *Nagle v. O'Donnell*, 7 Ir. Rep. C. L. 79); and her separate property was liable to

Sect. 13. Continue to be liable—*continued.*

satisfy such liability, even though it was settled to her separate use without power of anticipation. (*Sanger v. Sanger*, L. R. 11 Eq. 470; *London and Provincial Bank v. Boyle*, 7 Ch. D. 773. The cases of *Fitzgibbon v. Pike*, 17 Ch. D. 454; and *Smith v. Lucas*, 18 Ch. D. 531, apply only to liabilities incurred during coverture.)

The Amendment Act of 1874 applied only to persons married after it came into operation (July 30th, 1874). It provided that a husband should be liable for his wife's debts contracted *dum sola*, to the extent of the property he had received by her, but the liability of the wife remained unaffected.

The above section applies to all women whether married before or after the passing of this Act.

In *Hodgson v. Williamson*, 15 Ch. D. 87, it was held that debts chargeable upon the separate estate of a married woman, being debts payable out of funds held in trust for her separate estate, are not barred by the statute of limitation. Even assuming that property which a married woman now holds by virtue of this Act to be within the principle of this decision it could not apply to ante-nuptial liabilities, for these were not contracted with reference to separate estate, indeed no separate estate was then in existence.

(b) IN RESPECT AND TO THE EXTENT OF HER SEPARATE PROPERTY.

This phrase qualifies the liability of a married woman. If she has no separate estate she cannot be liable at all under this section, and if she has any separate estate she is liable only to the extent of it. It is to be observed that the liability under section 12 of the Act of 1870 was not thus limited, hence it was held immaterial under that section whether she had separate property or not. (See *Nagle v. O'Donnel*, ante, p. 13; 7 Ir. Rep. C. L. 79.)

(c) ALL DEBTS CONTRACTED.

Sect. 13.

A single woman made a promissory note jointly with an accommodation maker, and the payee obtained judgment against both, and the accommodation maker paid the amount. The woman having married after judgment but before payment, the Court of Common Pleas in Ireland held that her liability to indemnify the accommodation maker was a debt contracted before marriage, and her husband was not liable. (*Conlon v. Moore*, 9 Ir. Rep. C. L. 190.)

(d) WRONGS COMMITTED.

As to the torts of a married woman during coverture, see sect. 1, sub-section (2), *ante*, p. 16.

At common law the husband took the wife with all her obligations and liabilities, and became answerable for all torts committed by her while single. (Addison on Torts, p. 57.) Now the married woman herself is liable, but always subject to the qualification contained in the words "in respect of and to the extent of her separate property." The liability of the husband for such torts is regulated by the next section. The result of the two sections is curious. If a woman commits a tort and marries, if she has no separate property, she is not liable according to the construction which has been above placed on this section, and her husband will not be liable by reason of the next section. Of course this observation applies equally to other liabilities under this section.

(e) AS A CONTRIBUTORY.

See Note to sect. 6, *ante*, p. 40.

(f) SHE MAY BE SUED.

i.e. She may be sued personally. Judgment may now be given against her. (See *ante*, p. 12.)

Sect. 13. (g) OUT OF HER SEPARATE PROPERTY.

This provision confirms the opinion already expressed that a married woman is only liable when she is possessed of separate property and only to the extent of such property.

(h) PRIMARILY LIABLE.

This seems to point to a possible case where a married woman has separate property which would be liable under the Act, and where at the same time the husband would be liable under section 14 by reason of property which he may have acquired in his right. In such a case the separate property is to be primarily liable unless there is some contract between the husband and wife to the contrary.

(i) THE LIABILITY OF ANY WOMAN MARRIED BEFORE THE COMMENCEMENT OF THIS ACT.

This would depend on whether she was married before or after the passing of the Act of 1870. If before, a married woman is not liable while her husband is alive, except to the extent that she might formerly have bound her separate estate by her general engagements (see *ante*, pp. 15, 20). And as by the following section the liability of a husband married before the Act is preserved, it would seem that the remedy for the ante-nuptial liability of a woman married before 1870, is by action against the husband and wife jointly. If such an action is brought and judgment recovered, both husband and wife are discharged at law by the husband's bankruptcy, but the separate estate of the wife remains liable, at least unless the restraint on anticipation operates to prevent this. (*Chubb v. Stretch*, *ante*, note (a).) The liability remains after the determination of the coverture or after her death, for

The liability of any woman, &c.—*continued.*

Sect. 13.

"having created the right as a *feme sole*, she cannot, when she has actually become so, be permitted to disturb it" (per TURNER, L.J., in *Johnson v. Gallagher*, 3 D. F. & G. at p. 520, and see *Woodman v. Chapman*, 1 Camp. 189). And although upon her death the husband would be discharged from personal liability, yet he would be liable as his wife's administrator in respect of any property such as choses in action not reduced by him into possession during coverture. (*Heard v. Stamford*, 3 P. Wms. 409, 410; *Turner v. Caulfield*, 7 L. R. Ir. 347.)

With regard to the liability of women married after the passing of the Act of 1870, sect. 12 provided that a husband should not, by reason of any marriage which should take place thereafter, be liable for the debts of his wife contracted before marriage, but that the wife should be liable to be sued for, and any property belonging to her for her separate use should be liable to satisfy such debts as if she had continued unmarried. It was held in *Sanger v. Sanger*, L. R. 11 Eq. 470, that this section extended to property which was subject to a restraint on anticipation. (And see *The London Provincial Bank v. Bogle*, 7 Ch. D. 773.) As to whether a married woman is liable personally under that section, whether she has separate property or not, see *Nagle v. O'Donnel*, cited *ante*, p. 13, and the judgment of JESSEL, M.R., in *Howard v. The Bank of England*, set out *ante*, p. 14. See also *Williams v. Mercier*, 9 Q. B. D. 337, where it was held that a married woman might be sued alone under this section. It is to be observed that this section refers only to debts contracted (as to what is a debt, see *ante*, note (c)). Liabilities other than debts are not within the section and remained unaffected by the Act. The Act of 1874, which rendered a husband and wife liable to be sued jointly for a debt, made a husband liable only to the extent of assets received with his wife for any debt contracted

Sect. 13. The liability of any woman, &c.—*continued.*

or incurred or any breach or wrong committed by her before marriage. That Act applies only to persons married since 1874, and it is therefore submitted that a woman married before that date is not, though her husband is liable for her wrongs committed before marriage and for liabilities other than debts.

The present section of the Act of 1882 applies to all women married after January 1st, 1883. It also applies by reason of the proviso at the end of the section so as to render liable for ante-nuptial liabilities all property which by reason of this Act only becomes the separate property of a married woman married before the Act.

Husband
to be
liable for
his wife's
debts
contracted
before
marriage
to a
certain
extent.

14. A husband shall be liable (a) for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her, before marriage, including any liabilities to which she may be so subject under the Acts relating to joint stock companies as aforesaid (b), to the extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife, after deducting therefrom any payments made by him, and any sums for which judgment may have been *bond fide* recovered against him in any proceeding at law (c); in respect of any such debts, contracts, or wrongs for or in respect of which his wife was liable before her marriage as aforesaid; but he shall not be liable for the same any

further or otherwise; and any court in which a husband shall be sued for any such debt shall have power to direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount, or value of such property: Provided always, that nothing in this Act contained shall operate to increase or diminish the liability of any husband married before the commencement of this Act (*d*) for or in respect of any such debt or other liability of his wife as aforesaid. Sect. 14.

(a) A HUSBAND SHALL BE LIABLE.

Sect. 13 having declared that a married woman having separate estate shall be liable to the extent of it for her ante-nuptial debts and liabilities, the present section provides that the husband shall be liable only to the extent of such property of his wife as he shall have acquired or become entitled to from or through her. As already stated, the Act of 1870 freed a husband from all liability whatsoever. The Act of 1874 provided that he should be liable to the extent of certain assets acquired from or through her. The present sub-section takes the place of the Act of 1874.

An Englishman married in England after the passing of the Act of 1874 to a woman who had contracted debts while a *feme sole* in Jersey, was held liable in an action brought against them in England for those debts to the extent only of the assets derived from his wife and specified in sect. 5 of the Act of 1874, although by the law of Jersey a husband is liable for the ante-nuptial debts of his wife. (*De Greuchy v. Wills and Wife*, 4 C. P. D. 362.)

Sect. 14. (b) THE ACTS RELATING TO JOINT STOCK COMPANIES.

By sect. 78 of the Companies Act, 1862, it is provided "that if any female contributory marries either before or after she has been placed on the list of contributories, her husband shall during the continuance of the marriage be liable to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be deemed to be a contributory accordingly." In *Ex parte Hatcher*, 12 Ch. D. 284, it was held that this section rendered the husband himself a contributory, so that his liability was not limited by the Married Women's Property Act of 1874 to the interest acquired by him in right of his wife. The above section will prevent this decision from applying to husbands married after January 1st, 1883, as to antenuptial liabilities of the wife, but it will continue to be the law as to all married before that date. (See the proviso to this section and the note thereon. See also note (b) to sect. 6, *ante*, p. 40.)

(c) JUDGMENT RECOVERED.

Sect. 5 of the Act of 1874 contained the following proviso: "Provided that when the husband after marriage pays any debt of his wife, or has a judgment *bond fide* recovered against him in any such action as is in this Act mentioned, then to the extent of such payment or judgment the husband shall not in any subsequent action be liable." It was held that the words "any subsequent action" mean any action commenced subsequently to the time of bringing the action in which judgment has been recovered, and not merely an action commenced subsequently to the recovery of the judgment. (*Fear v. Castle and Wife*, 8 Q. B. D. 380.)

(d) HUSBAND MARRIED BEFORE COMMENCEMENT OF ACT. Sect. 14.

The liability of a husband married before the Act has already been to some extent noticed in the notes to the preceding section. It may, however, be repeated with advantage in this place so far as it relates to the liabilities of his wife before marriage.

A husband married before 1870 was and is responsible for the debts, contracts, and torts of his wife before marriage. He was and is still liable to be made a contributory in respect of his wife's shares, for the liability in such a case commenced when he married. (See per FRY, J., in *Ex parte Hatcher*, *supra*.)

A husband married between 1870 and 1874 was by sect. 12 of the Act of 1870 freed from all liability whatsoever in respect of the *debts* of his wife contracted before marriage. This would include liability in respect of his wife's shares. (*Ex parte Hatcher*, *supra*.) But the liability in other respects, as for his wife's torts, remained and remains unaffected by the Act of 1870.

A husband married since 1874 is liable for the debts, torts, breaches of contract of his wife before marriage to the extent only of certain specified assets which he has acquired from or through his wife. (See *Fear v. Castle*, *supra*, as to his liability in subsequent actions.)

15. A husband and wife may be jointly sued in respect of any such debt or other liability (whether by contract or for any wrong) contracted or incurred by the wife before marriage as aforesaid, if the plaintiff in the action shall seek to establish his claim, either wholly or in part, ^{Suits for ante-nuptial liabilities.}

Sect. 15. against both of them (a); and if in any such action, or in any action brought in respect of any such debt or liability against the husband alone (b), it is not found that the husband is liable in respect of any property of the wife so acquired by him or to which he shall have become so entitled as aforesaid, he shall have judgment for his costs of defence (c), whatever may be the result of the action against the wife if jointly sued with him; and in any such action against husband and wife jointly, if it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment (d) against the husband personally and against the wife as to her separate property; and as to the residue, if any, of such debt and damages, the judgment shall be a separate judgment against the wife as to her separate property only.

(a) AGAINST BOTH OF THEM.

The wife will be liable under sect. 13 in respect and to the extent of her separate estate. The husband will be liable under sect. 14 to the extent of any property he may have acquired or become entitled to from or through his wife, but not further or otherwise. An action should not therefore be brought against both, unless it can be proved that both are

Against both of them—*continued*.

Sect. 15.

liable. Want of attention to this may make the plaintiff liable for the husband's costs. (As to which see the next note.)

(b) AGAINST THE HUSBAND ALONE.

An action may be brought against the husband alone, if it is sought to render him liable under sect. 14. As already stated in the notes to that section, it re-enacted the provisions of the Act of 1874 in substance; but there are certain points of difference. Thus sect. 2 of the Act of 1874 required the husband to plead want of assets. And in an action against a husband and wife married after 1874 for the recovery of a debt of the wife contracted before the marriage, it was held not to be necessary to state in the statement of claim that the husband had received assets of the wife, and that it was sufficient that he should simply allege that the husband was liable for the debt, leaving it to the husband to exercise his option of pleading non-liability under the provisions of the Act. (*Matthews v. Whittle*, 13 Ch. D. 811.) There is no such provision in the present Act, and it is probable, having regard to the provisions of sect. 14, that the burden of proving, if not of pleading, assets in the husband will in future be upon the plaintiff.

It will also be observed that while the Act of 1874 provided that husband and wife should be sued jointly, under the present Act the action may be brought against the wife alone under sect. 13, against the husband alone under sect. 14, or against husband and wife jointly under this section.

(c) HIS COSTS OF DEFENCE.

In an action against a husband and wife for a debt contracted by the latter before marriage, judgment was entered against the wife for principal, interest, and costs, but in favour of the husband, with costs,

Sect. 15. His costs of defence—*continued.*

according to the provisions of the Act of 1874. The wife's property having been settled on her marriage for her separate use, without power of anticipation, the plaintiffs commenced an action in the Chancery Division for the purpose of enforcing the judgment obtained by them against the wife, and further to be allowed to add to this the costs they had had to pay the husband. It was held that notwithstanding the restraint against anticipation, the plaintiffs were entitled to recover against the separate estate of the wife the amount of their judgment debt and costs, as well as the costs paid to the husband, which might be added to their original debt. (*London Provincial Bank v. Bogle*, 7 Ch. D. 773.) The ground of this decision was thus stated by BACON, V.-C.—“The plaintiffs were obliged to make the husband a party. How otherwise were they to know that the husband had no assets in respect of which he could be made liable for his wife's debts contracted before marriage? They were not bound to accept his plea without investigation. The plaintiffs, as creditors, are entitled to all the necessary costs that they have been put to in enforcing their claim. I therefore think that they are entitled to add the costs of the husband's successful defence to their debt.” But if, as above suggested, the burden of proof of assets in the husband is now upon the plaintiff, it may be that the rule in this case may not be held applicable, at least in cases where the plaintiff has no good ground for making the husband a party. At any rate, it would be in the discretion of the court to refuse to allow such costs to be charged against the wife's estate.

(d) JOINT JUDGMENT.

The effect of this provision is that judgment is given against the separate estate of the wife for the

Joint judgment—*continued*.

Sect. 15.

whole debt. By sect. 13, as between her and her husband, such separate estate is primarily liable. There is no such priority as against creditors, and the plaintiff may proceed against the wife or her husband under the Act as he thinks fit. The judgment against the husband does not, however, affect the liability of the wife as to her separate property, which is liable for the whole, or for such part as may not have been satisfied under the judgment against the husband.

16. A wife doing any act with respect to any property of her husband, which, if done by the husband with respect to property of the wife, would make the husband liable to criminal proceedings by the wife under this Act, shall in like manner be liable to criminal proceedings by her husband.

Act of
wife liable
to criminal
proceed-
ings.

In order to appreciate the effect of this section it is necessary to refer to sect. 12 (*ante*, p. 59). That section provides (*inter alia*) that a married woman shall have the same remedies and redress by way of criminal proceedings against her husband for the protection and security of her separate property as if such property belonged to her as a *feme sole*, subject, however, to a proviso to be noticed hereafter. Sect. 16 provides in effect that a husband may have the same remedies or redress by way of criminal proceedings against his wife in respect of his property, thus reversing the old common law rule that a wife could not steal her husband's property. (Archbold, p. 362, and *vide supra*.)

Sect. 12 further provides that in any indictment or other proceedings under that section it shall be suffi-

Sect. 16.

cient to allege the property to be her property. Therefore, under sect. 16, it will be sufficient to allege that the property is the property of the husband, as in the case of any other prosecution by him.

Sect. 12 then provides that in any proceeding under that section (*i.e.* by a wife against a husband) a husband or wife shall be competent to give evidence against each other, any statute or rule of law to the contrary notwithstanding. It has already been pointed out that this provision may not be held to enable a husband to give evidence, though the wife may do so. The same remark applies here *mutatis mutandis*. But it may be doubted whether the words of this section, which simply render a wife liable to criminal proceedings *in like manner* as her husband is rendered liable under sect. 12, have the effect of incorporating the provisions of sect. 12, which enables the parties to give evidence *against each other*, whether that phrase enables the prosecutrix only or both parties to give evidence.

The proviso in sect. 12 may be thus rendered under sect. 16: Provided always that no criminal proceeding shall be taken by any husband against his wife by virtue of this Act while they are living together as to or concerning any property claimed by him, nor while they are living apart as to or concerning any act done by the wife while they were living together concerning property claimed by him, unless such property shall have been wrongfully taken by the wife when leaving or deserting, or about to leave or desert her husband. The meaning of the words *leaving or deserting* has already been noticed (*ante*, p. 63). As already mentioned, at common law a wife could not be convicted of stealing her husband's goods. In *Reg. v. Kenny*, 2 Q. B. D. 307, it was held that a wife, though she might have committed adultery, could not steal her husband's goods, being in law one person with him, and that, therefore, the adulterer

receiving from her the goods which she had taken from her husband, could not be convicted of receiving stolen goods. The foregoing proviso completely changes the law in this respect. A wife who takes her husband's property (and that includes everything which is not her separate property, even though it may have come to her husband by or through her) may now be convicted of larceny of such goods, and any person receiving them from her may also be convicted as a receiver. Sect. 18.

17. In any question between husband and wife (a) as to the title to or possession of property (b), either party, or any such bank, corporation, company, public body, or society as aforesaid (c) in whose books any stocks, funds, or shares of either party are standing, may apply by summons or otherwise in a summary way to any judge of the High Court of Justice in England (d) or in Ireland, according as such property is in England or Ireland, or (at the option of the applicant irrespectively of the value of the property in dispute) in England to the judge of the county court of the district, or in Ireland to the chairman of the civil bill court of the division in which either party resides, and the judge of the High Court of Justice or of the county court, or the chairman of the civil bill court (as the case may be) may make such order (e) with respect to the property in dispute, and as to the costs of and consequent on the application as he thinks

Questions
between
husband
and wife
as to
property
to be
decided
in a
summary
way.

Sect. 17. fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he shall think fit: Provided always, that any order of a judge of the High Court of Justice to be made under the provisions of this section shall be subject to appeal (*f*) in the same way as an order made by the same judge in a suit pending or on an equitable plaint in the said court would be; and any order of a county or civil bill court under the provisions of this section shall be subject to appeal (*f*) in the same way as any other order made by the same court would be, and all proceedings in a county court or civil bill court under this section in which, by reason of the value of the property in dispute, such court would not have had jurisdiction if this Act or the Married Women's Property Act, 1870, had not passed, may, at the option of the defendant or respondent to such proceedings, be removed as of right into the High Court of Justice in England or Ireland (as the case may be), by writ of *certiorari* (*g*) or otherwise as may be prescribed by any rule of such High Court; but any order made or act done in the course of such proceedings prior to such removal shall be valid, unless order shall be made to the contrary by such High Court: Provided also, that the judge of the

High Court of Justice or of the county court, or Sect. 17. the chairman of the civil bill court, if either party so require, may hear any such application in his private room: Provided also, that any such bank, corporation, company, public body, or society as aforesaid, shall, in the matter of any such application for the purposes of costs or otherwise, be treated as a stakeholder only (*h*).

(a) BETWEEN HUSBAND AND WIFE.

There is no limitation of the application of this section to persons married after January 1st, 1883. Any husband or wife may therefore obtain the benefit of its provisions.

(b) THE TITLE TO OR POSSESSION OF PROPERTY.

This limits the matters which can be made the subject of applications under this section. But there is no limitation as under sect. 9 of the Act of 1870 to property which is declared by the Act to be separate property.

(c) ANY SUCH BANK, ETC.

Proceedings under this section can only be taken by the bank or other body when there is a question between the husband and wife. This section does not enable the bank, etc., to institute proceedings when there is no such question. The bank or other body are bound in the absence of any such question to pay or transfer to her the money or stock standing in her name without any inquiry as to her title, and are protected by the preceding sections of the Act from liability in respect of such payment or transfers without notice.

Sect. 17. (d) ANY JUDGE OF THE HIGH COURT.

The application may be made in chambers. (See the Judicature Act, 1873, s. 39, and *Hillman v. Mayhew*, 1 Ex. D. 132.)

(e) MAY MAKE SUCH ORDER.

The court may restrain a husband from interfering with his wife's separate property. (See *ante*, pp. 6, 60.) As to cases where a married woman has permitted her husband to receive part of her separate estate, see p. 6.

(f) APPEAL.

If the appeal is from a judge at chambers, it must be brought in the divisional court within eight days after the decision appealed against, or if no divisional court sits within that time, then on the first day on which such court may afterwards be sitting. The appeal is by motion, of which two clear days' notice must be given. (R. S. C. ord. liii. r. 4; and ord. liv. r. 6.) In the Chancery Division, where a judge has made an order in chambers, and on a rehearing has affirmed that order in court, appeal lies to the Court of Appeal within twenty-one days from the order in court. An application for a rehearing in court must be made within twenty-one days of the order in chambers, subject to the discretion of the court to enlarge the time. (*Dickson v. Harrison*, 26 W. R. 730.) If the judge does not desire to hear the case further argued in court, the Court of Appeal, on production of a certificate to that effect, or on being otherwise satisfied, will hear the appeal. (*Thomas v. Elsom*, 6 Ch. D. 346; *Andrews and Stoney's Judicature Acts and Rules*, p. 256.) If the appeal is from a judge in court, then as it is to be treated as if made in a suit pending or on an equitable plaint, it will lie

Appeal—*continued*.

Sect. 17.

to the Court of Appeal, and, being an interlocutory order, must be brought within twenty-one days. (R. S. C. ord. lviii. r. 16.)

The appeal from the county court is regulated by the county court rules order xxix. as to appeal by special case, and by the 38 & 39 Vict. c. 50, s. 6, by way of motion.

(g) CERTIORARI.

As to the practice in removing proceedings from a county court by *certiorari*, see Archbold's Practice, vol. 2, p. 1404, and Pitt Lewis's County Court Practice, p. 172.

(h) STAKEHOLDER.

A stakeholder may compel the claimants to interplead. (See the Interpleader Acts, 1 & 2 Will. 4, c. 58, and 23 & 24 Vict. c. 126, ss. 12—18.) But the present section gives a better remedy to the stakeholder in that it enables him to take the initiative and apply directly for an order with respect to the property in dispute. The remedy by interpleader, however, is not taken away when it is applicable on interpleader. The stakeholder must not claim any interest in the subject matter in dispute, and must not be in collusion with either party. He may also pay money into court under the Trustee Relief Act, 10 & 11 Vict. c. 96. Thus in *Re the United Kingdom Life Assurance Company*, 34 L. J. Ch. 554, a sum of money payable under a policy was paid into court under this Act by the company in consequence of conflicting claims. But this rule is subject to the qualification laid down in *Re Haycock's Policy*, 1 Ch. D. 611, where it was held that, except in cases of assignment to which the Judicature Act, 1873, sect. 25, sub-sect. 6, applies, an assurance company cannot under the Trustee Relief

Sect. 17. Stakeholder—continued.

Act pay moneys into court in case of conflicting claims, unless the moneys are the subject of a trust. And see *Matthew v. The Northern Assurance Company*, 9 Ch. D. 80. In *Re Sutton's Trust*, 12 Ch. D. 175, it was held that the Judicature Act, 1873, sect. 25, subsect. 6, applied only to debts of which there had been an absolute assignment in writing, and that a banking company could not pay into court under that section moneys deposited with them as to which there were conflicting claims.

Married
woman
as an
executrix
or trustee.

18. A married woman who is an executrix or administratrix alone or jointly with any other person or persons of the estate of any deceased person, or a trustee alone or jointly as aforesaid of property subject to any trust, may sue or be sued, and may transfer or join in transferring any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society in that character, without her husband, as if she were a *feme sole*.

A married woman might formerly have been a trustee, but it was always considered inadvisable to appoint her, chiefly on account of her "inability, except with the concurrence of her husband and through expensive forms, to join in the requisite assurances." (Lewin on Trusts, p. 32.) This inability

is removed by the present section, which recognizes her capacity to act as trustee, and enables her to act without her husband's concurrence in respect of the matters mentioned in the section. **Sect. 18.**

A married woman could not formerly have accepted the office of executrix or administratrix without the consent of her husband. (Williams on Executors, pp. 232, 456.) But see now sect. 24 and the notes thereon as to the capacity of a married woman to be appointed executrix or administratrix.

Leave will not now be necessary for a married woman to sue alone when she is a trustee. Leave was necessary before the Act. (*Kingsman v. Kingsman*, 6 Q. B. D. 122.)

As to the liability of husband and wife for her breaches of trust or devastavit, see sect. 24 and the notes thereon.

19. Nothing in this Act contained shall interfere with or affect any settlement or agreement for a settlement (a) made or to be made, whether before or after marriage, respecting the property of any married woman, or shall interfere with or render inoperative any restriction against anticipation (b) at present attached to or to be hereafter attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will, or other instrument; but no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property to be made or entered into by herself shall have any

Saving of existing settlements, and the power to make future settlements.

Sect. 19. validity against debts contracted by her before marriage (c), and no settlement or agreement for a settlement shall have any greater force or validity against creditors (d) of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors.

(a) SETTLEMENT.

Marriage is a valuable consideration (*Ford v. Stuart*, 15 Beav. 493; *Frazer v. Thompson*, 4 D. & J. 661), and a settlement founded upon it will not in general be considered voluntary or fraudulent under the 13 Eliz. c. 5, or the 27 Eliz. c. 4. It has already been noticed, however, that if the settlement is part of a scheme to defraud creditors it will not be supported (*ante*, p. 53).

A post-nuptial settlement is valid to the same extent as a pre-nuptial settlement if made in pursuance of articles or letters written prior to the marriage. If not so made it is binding on the husband and against all persons privy and consenting to it and against strangers other than creditors or *bona fide* purchasers for valuable consideration. (*Robinson v. McDonnell*, 2 B. & A. 134; *Steel v. Brown*, 1 Taunt. 381; *Oliver v. King*, 25 L. J. Ch. 427; *Bessy v. Windham*, 6 Q. B. 166. And see Roper on Husband and Wife, vol. 1, p. 306.) Post-nuptial settlements in fraud of creditors are void under the 13 Eliz. c. 5, and will in certain cases already mentioned be void under the Bankruptcy Act, 1869. (See *ante*, sect. 10, and the notes thereto on this point and as to fraudulent investments with moneys of husband or gifts to wife in fraud of creditors.)

Settlement—*continued*.

Sect. 19.

The present Act does not affect any settlement upon a married woman, and the validity of it will in no way depend upon its construction. But it will be observed that the necessity for a settlement does not now exist to the same extent, seeing that all property belonging to a woman married after the Act is to be regarded as her separate estate. There cannot, however, be any restraint on anticipation unless there is a settlement, and it may therefore be considered as necessary now as before the Act to make a marriage settlement.

(b) RESTRICTION AGAINST ANTICIPATION.

The clause in restraint of anticipation was first introduced into a settlement by Lord THURLOW, who was a trustee of the settlement, and it is now valid when annexed to any gift to a married woman to her separate use. No particular words are necessary to create it if the intention is clear. It operates only during coverture, so that if a woman becomes discover it becomes of no effect. On her subsequent marriage it will again revive unless it has been expressly confined to one particular coverture. (*Tullett v. Armstrong*, 1 Beav. 1; *Hawkes v. Hubback*, L. R. 11 Eq. 5; and see the whole subject discussed in the notes to *Hulme v. Tennant*, 1 W. & T. L. C. p. 565.) The court formerly had no power to dispense with the clause, even where it was for the benefit of the married woman. (*Robinson v. Wheelwright*, 21 Beav. 214; 6 D. M. & G. 535; *Gaskell's Trusts*, 11 Jur. (N.S.) 780; *Dickson v. Hook*, 14 W. R. 552; *In re Ellis*, L. R. 17 Eq. 409; *Worsnop v. Benassi*, 21 W. R. 684.) It is, however, provided by the Conveyancing Act, 1881, s. 39, that notwithstanding that a married woman is restrained from anticipation, the court may, if it thinks fit, where it appears to the court to be for her

Sect. 19. Restriction against anticipation—continued.

benefit, by judgment or order made after the commencement of that Act, with her consent, bind her interest in any property. (On this Act see *Tamplin v. Miller*, 30 W. R. 422; *Hodges v. Hodges*, 30 W. R. 483; 20 Ch. D. 749.) And the Settled Land Act, 1882, sect. 61, sub-sect. (6), provides that a restraint on anticipation in a settlement shall not prevent the exercise by a married woman of any power under that Act.

A restraint on anticipation does not prevent a married woman who is equitable tenant in tail of lands to her separate use from barring the entail and acquiring the equitable fee. (*Cooper v. Macdonald*, 7 Ch. D. 288.)

The effect of a restraint on anticipation is preserved by this section, and qualifies many of the preceding sections of the Act. Thus sect. 1, sub-sect. 2, provides that any damages or costs recovered against a married woman shall be payable out of her separate property and not otherwise. But this is subject to there being no restraint on anticipation. The same remark will apply to sect. 1, sub-sect. 4, which must be read as applying only to property which is not subject to a restraint on anticipation.

Income which a married woman is restrained from anticipating cannot be applied to make good the consequences of her fraud where the restraint on anticipation appears from the instrument in respect of which the relief is sought. (*Arnold v. Woodhams*, L. R. 16 Eq. 29.) In *Stanley v. Stanley*, 7 Ch. D. 589, a married woman having property settled to her separate use, with restraint upon anticipation, concurred in a fraudulent mortgage of such property, concealing the restraint upon anticipation. The mortgagee obtained judgment against her for the amount lent and a charging order to charge her next accruing dividend. It was held that such charging order must be dis-

Restriction against anticipation—*continued.*

Sect. 19.

charged, for in no case and by no device could the restraint upon anticipation be evaded. And see *Wainford v. Heyl*, L. R. 20 Eq. 321, and *ante*, p. 18. Notwithstanding, therefore, the liability imposed on a married woman by this Act in respect of her torts committed during coverture, the effect of this section and the case just cited will be to limit that liability when there is a restraint on anticipation. *Pike v. Fitzgibbon*, 17 Ch. D. 454, *ante*, p. 23, decided that the general engagement of a married woman could not be enforced against property which at the time of such engagement was subject to a restraint on anticipation. This will by virtue of sect. 19 still be the rule.

(c) DEBTS CONTRACTED BEFORE MARRIAGE.

A woman possessing property could not formerly and cannot now, by reason of this provision, settle her property on herself without power of anticipation, so as to free herself from liability to pay her debts contracted before marriage. After the passing of the Married Women's Property Act, 1870, and on the same day on which a marriage took place, but subsequently thereto, judgment was entered up against the wife for a debt incurred previously to the marriage. The judgment creditors subsequently obtained a charging order on the wife's interest in a fund in court, to the income of which the wife was entitled for her separate use, without power of anticipation. It was held that sect. 12 of the Act of 1870 applied to such property, and that the charging order constituted a valid incumbrance on the fund, notwithstanding the restraint on anticipation. (*Sanger v. Sanger*, L. R. 11 Eq. 470.) This decision was followed in *The London and Provincial Bank v. Bogle*, 7 Ch. D. 773.

It is to be observed that this proviso only applies to debts (as to the meaning of which term see *ante*,

Sect. 19. Debts contracted before marriage—*continued.*

p. 65). It does not apply to liabilities other than debts. It may be, however, that as a husband is freed from liability to his wife's torts, etc., committed before marriage, the wife's separate estate may be held liable according to the principle suggested by Lord ROMILLY, M.R., in *Sanger v. Sanger*, *supra*.

(d) VALIDITY AGAINST CREDITORS.

As to the validity of a settlement made by a man as against his creditors, see *ante*, pp. 49—53, and note (a) *supra*.

Married woman to be liable to the parish for the maintenance of her husband.

31 & 32
Vict.c.122.

20. Where in England the husband of any woman having separate property (a) becomes chargeable to any union or parish, the justices having jurisdiction in such union or parish (b) may, in petty sessions assembled, upon application of the guardians of the poor, issue a summons against the wife, and make and enforce such order against her for the maintenance of her husband out of such separate property as by the thirty-third section of the Poor Law Amendment Act, 1868 (c), they may now make and enforce against a husband for the maintenance of his wife if she becomes chargeable to any union or parish. Where in Ireland relief is given under the provisions of the Acts relating to the relief of the destitute poor to the husband of any woman having separate property, the cost price of such relief is hereby declared to be a loan from the guardians of th

union in which the same shall be given, and shall Sect. 20.
be recoverable from such woman as if she were a
feme sole by the same actions and proceedings as
money lent.

(a) **HAVING SEPARATE PROPERTY.**

A married woman is not liable by this or any other statute to support her husband if she has no separate property. It is to be observed, however, that if she has separate property her liability under this section is a personal one. The order must be made upon her and enforced against her, not against the trustees of her separate estate.

(b) **HAVING JURISDICTION IN SUCH UNION.**

The 30 & 31 Vict. c. 106, s. 27, provides that where a union extends into several distinct jurisdictions, every matter, act, charge or complaint by which the guardians thereof are affected, or in which they have any interest, shall for the purpose of jurisdiction be deemed to arise or exist equally throughout the union.

(c) **THE POOR LAW AMENDMENT ACT, 1868, s. 33.**

This section is as follows. When a married woman requires relief without her husband, the guardians of the union or parish, or the overseers of the parish as the case may be to which she becomes chargeable, may apply to the justices having jurisdiction in such union in petty sessions assembled, and thereupon such justices may summon such husband to appear before them to show cause why an order should not be made upon him to support his wife; and upon his appearance, or in the event of his not appearing upon proof of due service of such summons upon him, such justices may after hearing such wife upon oath, or receiving such

Sect. 20. The Poor Law Amendment Act, 1868, s. 33—*continued.*

other evidence as they may deem sufficient, make an order upon him to pay such sum, weekly or otherwise, towards the cost of the relief of the wife, as, after consideration of all the circumstances of the case, shall appear to them to be proper, and shall determine in such order how and to whom the payments shall from time to time be made; which order shall, if the payments required by it to be made be in arrear, be enforced in the manner prescribed by the 11 & 12 Vict. c. 43, for the enforcing of orders of justices requiring the payment of a sum of money: Provided that such order may be at any future time revoked by the justices in petty sessions assembled, if they see sufficient cause for so doing.

It is to be observed that in section 20 there is no mention of an application by the overseers of the parish.

An order of this kind is now enforceable as a civil debt under sections 6 and 35 of the Summary Jurisdiction Act, 1879, which supersede the provisions of the 11 & 12 Vict. c. 43, as to enforcing orders for the payment of money. A defendant cannot now be committed for non-payment of a civil debt, except on a judgment summons upon proof of means. (See the law on this subject in Glen's Summary Jurisdiction Acts, and Stone's Justices' Manual.)

It has been held that the jurisdiction of justices to make an order under the 31 & 32 Vict. c. 122, s. 33, is not ousted by the offer of the husband to receive back and provide for his wife, but that it is for the justices to consider, under all the circumstances of the case, whether or not the refusal of the wife to return to her husband's home is reasonable. (*Thomas v. Alsop*, L. R. 5 Q. B. 151.) Guardians applied under this Act for an order on a husband, it was proved that the wife had married a former husband in 1840, who left her in 1845; after which she was informed of his death on a

The Poor Law Amendment Act, 1868, s. 33—*continued*.

Sect. 20.

voyage, but she was not able to ascertain the truth of his death. She married again in 1849, and the former husband had not been heard of since then. It was held that the justices were justified, on such evidence, in assuming that the second man to whom she was married was her lawful husband, and in making an order upon him accordingly. (*Deakin v. Deakin*, 33 J. P. 805.) The adultery of the wife if not condoned, discharges the husband from liability to maintain her. (*Culley v. Charman*, 7 Q. B. D. 89; 45 J. P. 388.) Probably the same rule would be held to apply in case of the adultery of the husband.

21. A married woman having separate property shall be subject to all such liability for the maintenance of her children and grandchildren as the husband is now by law subject to for the maintenance of her children and grandchildren: Provided always, that nothing in this Act shall relieve her husband from any liability imposed upon him by law to maintain her children or grandchildren.

Married woman to be liable to the parish for the maintenance of her children.

Apart from the liability created by this section, a married woman is not liable to maintain her children. It was held in an old case that she could not be made liable under the statute 43 Eliz. c. 2, s. 7. (*Custodes v. Jinks*, Sty. 283.) The Act of 1870 made a married woman having separate property liable to maintain her children, to the same extent as a widow was liable under the Poor Law Acts (43 Eliz. c. 2, s. 7, and 4 & 5 Wm. 4, c. 76, s. 56); but it was held that that section did not include grandchildren. (*Coleman v. The Overseers of*

Sect. 21.

Birmingham, 6 Q. B. D. 615.) The present section renders a married woman having separate property liable to the same extent as her husband for the maintenance of both her children and her grandchildren. It is to be observed that this liability is concurrent with that of the husband, and not merely consequent upon his inability or default. See *R. v. Cornish*, 2 B. & A. 502, where a grandfather was held liable under the 43 Eliz. c. 2, without showing that the father was unable or absent or dead.

As under this section a married woman is now liable to the same extent as her husband, it may be that she is also subject to many important consequences of such liability. For example, the person legally liable to maintain a child is liable to be proceeded against under the Education Acts, the Industrial Schools Act, and similar statutes. In *Peters v. Gowie*, 46 L. J. M. C. 177, 41 J. P. 597, it was held that a married woman who had no separate property could not be convicted under the Vagrant Act, 5 Geo. 4, c. 83, ss. 3, 4, for neglecting to maintain or for deserting her family. The ground of this decision was that having no separate property she was not liable to support her children, but it was pointed out by MANISTY, J., that if she had had separate estate, and had thus been liable to maintain the children under the Act of 1870, she might have been convicted. The same principle it is submitted is applicable to a woman liable under this section.

Repeal of

33 & 34

Vict. c. 93.

37 & 38

Vict. c. 50.

22. The Married Women's Property Act,

1870, and the Married Women's Property Act,

1870, Amendment Act, 1874, are hereby repealed :

Provided that such repeal shall not affect any act done or right acquired while either of such Acts was in force, or any right or liability of any hus-

band or wife, married before the commencement Sect. 22. of this Act, to sue or be sued under the provisions of the said repealed Acts or either of them, for or in respect of any debt, contract, wrong, or other matter or thing whatsoever, for or in respect of which any such right or liability shall have accrued to or against such husband or wife before the commencement of this Act.

The liabilities of husband and wife married before 1870, or after that year and before 1874, or between 1874 and the commencement of the present Act, have already been discussed in the notes to the preceding sections, and it is unnecessary to recapitulate them. The present section repeals the Acts of 1870 and 1874, but preserves all rights or liabilities which accrued while they were in force. Such right or liability may still be exercised or recovered notwithstanding this repeal.

23. For the purposes of this Act the legal ^{Legal} personal representative of any married woman ^{representative of married woman.} shall in respect of her separate estate have the same rights and liabilities and be subject to the same jurisdiction as she would be if she were living.

It has already been pointed out that the property of a married woman which her husband takes on her death *jure mariti* is subject to her debts (*ante*, p. 9). The present section merely declares that if the husband or any other person administers to her estate, or is executor under her will, he is liable as such executor or

Sect. 23.

administrator, to the same extent as she would have been had she been alive.

In *Re Pooles Estate*, 6 Ch. D. 739, following *Owens v. Dickenson*, Cr. & Ph. 48, it was held that the separate property of a married woman in earnings under the Act of 1870, became upon her death equitable assets and divisible among her creditors *pari passu*, so that her executor had no right to retain in full his own debt thereout. But it is submitted that this is no longer law, for the ground of that decision was that under the Act of 1870, separate estate could only be got at through a Court of Equity, there being no express provision as to suing a married woman. Under the present Act a married woman can be sued, and a remedy can be had against a married woman in an action at law. As to the distinction between legal and equitable assets, see Williams on Executors, pp. 992, 1686.

Interpre-
tation of
terms.

24. The word "contract" in this Act shall include the acceptance of any trust, or of the office of executrix or administratrix, and the provisions of this Act as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by any married woman being a trustee or executrix or administratrix either before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration. The word "property" in this Act includes a thing in action.

The effect of this section is to render a married woman capable of rendering herself liable in respect of

any trust, or as executrix, or administratrix, in respect Sect. 24.
and to the extent of her separate property. Section 18
has removed many of the difficulties hitherto in the way
of her acting as trustee, executor or administrator; but
although this section is very awkwardly expressed,
seeing that the interpretation of the word contract does
not read exactly into the previous sections of the Act,
it would seem that section 18 was almost unnecessary.
For a married woman may contract in respect and to
the extent of her separate property; she may render
herself liable, and she may sue and be sued in all re-
spects as if she were a *feme sole*. And she may in like
manner hold and dispose of any property. However
this may be, she may, under this section, accept the
offices referred to, and may render herself liable for
breaches of trust or devastavits.

A married woman might formerly in some cases
have committed a breach of trust for which her sepa-
rate estate might have been made liable provided there
was no restraint upon anticipation. (*Wainford v.*
Heyl, L. R. 20 Eq. 321; *Lewin on Trusts*, 654). The
effect of a restraint on anticipation is preserved by this
Act.

A husband was always formerly answerable for his
wife's breaches of trusts (*Lewin*, p. 32), and for her
devastavits (*Williams on Executors*, p. 1844). For
this reason she was not allowed to execute the trust or
to accept the office of executor or administrator without
his consent. Now she may do so without her husband's
concurrence, and he is no longer liable unless he inter-
meddles. It will be observed that this section applies
to all women whether married before or after the pas-
sing of the Act, and that the husband is freed from
liability in respect of any breach of trust or devastavit
which may have been committed whether before or
after the marriage.

Sect. 25. **25.** The date of the commencement of this Act shall be the first of January one thousand eight hundred and eighty-three.

Com-
mence-
ment of
Act.

26. This Act shall not extend to Scotland.

Extent of
Act.

27. This Act may be cited as the Married Women's Property Act, 1882.

Short
title.

APPENDIX.

ARRANGEMENT OF SECTIONS.

SECT.

1. Married woman to be capable of holding property and of contracting as a *feme sole*.
2. Property of a woman married after the Act to be held by her as a *feme sole*.
3. Loans by wife to husband.
4. Execution of general power.
5. Property acquired after the Act by a woman married before the Act to be held by her as a *feme sole*.
6. As to stock, etc., to which a married woman is entitled.
7. As to stock, etc., to be transferred, etc., to a married woman.
8. Investments in joint names of married women and others.
9. As to stock, etc., standing in the joint names of a married woman and others.
10. Fraudulent investments with money of husband.
11. Moneys payable under policy of assurance not to form part of estate of the insured.
12. Remedies of married woman for protection and security of separate property.
13. Wife's ante-nuptial debts and liabilities.
14. Husband to be liable for his wife's debts contracted before marriage to a certain extent.
15. Suits for ante-nuptial liabilities.
16. Act of wife liable to criminal proceedings.
17. Questions between husband and wife as to property to be decided in a summary way.
18. Married woman as an executrix or trustee.

SECT.

19. Saving of existing settlements, and the power to make future settlements.
 20. Married woman to be liable to the parish for the maintenance of her husband.
 21. Married woman to be liable to the parish for the maintenance of her children.
 22. Repeal of 33 & 34 Vict. c. 93 ; 37 & 38 Vict. c. 50.
 23. Legal representative of married woman.
 24. Interpretation of terms.
 25. Commencement of Act.
 26. Extent of Act.
 27. Short title.
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THE
MARRIED WOMEN'S PROPERTY ACT,
1882.

APPENDIX

Sect. 1.

45 & 46 VICT. CAP. 75.

*An Act to consolidate and amend the Acts relating to the
Property of Married Women.*

[18th August, 1882.]

WHEREAS it is expedient to consolidate and amend the Act of the thirty-third and thirty-fourth Victoria, chapter ninety-three, intituled "The Married Women's Property Act, 1870," and the Act of the thirty-seventh and thirty-eighth Victoria, chapter fifty, intituled "An Act to amend the Married Women's Property Act (1870) :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. (1.) A married woman shall, in accordance with Married the provisions of this Act, be capable of acquiring, hold- woman to ing, and disposing by will or otherwise, of any real or be capable of holding personal property as her separate property, in the same property and of contract- ing as a *feme sole*.
manner as if she were a *feme sole*, without the inter-
vention of any trustee—see pp. xx, 4.

APPENDIX (2.) A married woman shall be capable of entering
Sect. 1. into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in tort, or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her, and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise—see pp. xx, 11.

(3.) Every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property, unless the contrary be shown—see pp. xxi, 20.

(4.) Every contract entered into by a married woman with respect to and to bind her separate property shall bind not only the separate property which she is possessed of or entitled to at the date of the contract, but also all separate property which she may thereafter acquire—see pp. xxi, 23.

(5.) Every married woman carrying on a trade separately from her husband, shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a *feme sole*—see pp. xxi, 28.

Property of a woman married after the Act to be held by her as a *feme sole*. 2. Every woman who marries after the commencement of this Act shall be entitled to have and to hold as her separate property and to dispose of in manner aforesaid all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including

any wages, earnings, money, and property gained or acquired by her in any employment, trade, or occupation, in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill—*see* p. 27.

APPENDIX
Sect. 2.

3. Any money or other estate of the wife lent or entrusted by her to her husband for the purpose of any trade or business carried on by him, or otherwise, shall be treated as assets of her husband's estate in case of his bankruptcy, under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, but not before, all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied—*see* pp. xxxi, 82.

Loans by
wife to
husband.

4. The execution of a general power by will by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities in the same manner as her separate estate is made liable under this Act—*see* pp. xxxi, 84.

Execution
of general
power.

5. Every woman married before the commencement of this Act shall be entitled to have and to hold and to dispose of in manner aforesaid as her separate property all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the commencement of this Act, including any wages, earnings, money, and property so gained or acquired by her as aforesaid—*see* p. 36.

Property
acquired
after the
Act by a
woman
married
before the
Act to be
held by
her as a
feme sole.

6. All deposits in any post office or other savings bank, or in any other bank, all annuities granted by the Commissioners for the Reduction of the National

As to
stock, etc.
to which a
married

APPENDIX Debt or by any other person, and all sums forming part
 Sect. 6. of the public stocks or funds, or of any other stocks or
 woman is funds transferable in the books of the Governor and
 entitled. Company of the Bank of England, or of any other bank,
 which at the commencement of this Act are standing in
 the sole name of a married woman, and all shares, stock,
 debentures, debenture stock, or other interests of or in
 any corporation, company, or public body, municipal,
 commercial, or otherwise, or of or in any industrial,
 provident, friendly, benefit, building, or loan society,
 which at the commencement of this Act are standing
 in her name, shall be deemed, unless and until the con-
 trary be shown, to be the separate property of such
 married woman; and the fact that any such deposit,
 annuity, sum forming part of the public stocks or funds,
 or of any other stocks or funds transferable in the books
 of the Governor and Company of the Bank of England
 or of any other bank, share, stock, debenture, debenture
 stock, or other interest as aforesaid, is standing in the
 sole name of a married woman, shall be sufficient *prima*
facie evidence that she is beneficially entitled thereto
 for her separate use, so as to authorise and empower
 her to receive or transfer the same, and to receive the
 dividends, interest, and profits thereof, without the con-
 currence of her husband, and to indemnify the Post-
 master General, the Commissioners for the Reduction
 of the National Debt, the Governor and Company of
 the Bank of England, the Governor and Company of
 the Bank of Ireland, and all directors, managers, and
 trustees of every such bank, corporation, company,
 public body, or society as aforesaid, in respect thereof
 —see pp. xxviii, 88.

As to 7. All sums forming part of the public stocks or
 stock, etc., funds, or of any other stocks or funds transferable in

the books of the Bank of England or of any other bank, and all such deposits and annuities respectively as are mentioned in the last preceding section, and all shares, stock, debentures, debenture stock, and other interests of or in any such corporation, company, public body, or society as aforesaid, which after the commencement of this Act shall be allotted to or placed, registered, or transferred in or into or made to stand in the sole name of any married woman shall be deemed, unless and until the contrary be shown, to be her separate property, in respect of which so far as any liability may be incident thereto her separate estate shall alone be liable, whether the same shall be so expressed in the document whereby her title to the same is created or certified, or in the books or register wherein her title is entered or recorded, or not.

Provided always, that nothing in this Act shall require or authorise any corporation or joint stock company to admit any married woman to be a holder of any shares or stock therein to which any liability may be incident, contrary to the provisions of any Act of Parliament, charter, bye-law, articles of association, or deed of settlement regulating such corporation or company—see pp. xxviii, 42.

8. All the provisions hereinbefore contained as to deposits in any post office or other savings bank, or in any other bank, annuities granted by the Commissioners for the Reduction of the National Debt or by any other person, sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England or of any other bank, shares, stock, debentures, debenture stock, or other interests of or in any such corporation, company, public body, or society as aforesaid respectively, which at the com-

APPENDIX

Sect. 7.

to be transferred, etc.
to a married woman.

Investments in joint names of married women and others

APPENDIX commencement of this Act shall be standing in the sole name of a married woman, or which, after that time shall be allotted to, or placed, registered, or transferred to or into, or made to stand in, the sole name of a married woman, shall respectively extend and apply, so far as relates to the estate, right, title, or interest of the married woman, to any of the particulars aforesaid which, at the commencement of this Act, or at any time afterwards, shall be standing in, or shall be allotted to, placed, registered, or transferred to or into, or made to stand in, the name of any married woman jointly with any persons or person other than her husband—see pp. xxviii, 44.

As to stock, etc., standing in the joint names of a married woman and others.

9. It shall not be necessary for the husband of any married woman, in respect of her interest, to join in the transfer of any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society as aforesaid, which is now or shall at any time hereafter be standing in the sole name of any married woman, or in the joint names of such married woman and any other person or persons not being her husband—see pp. xxviii, 46.

Fraudulent investments with money of husband.

10. If any investment in any such deposit or annuity as aforesaid, or in any of the public stocks or funds, or in any other stocks or funds transferable as aforesaid, or in any share, stock, debenture, or debenture stock of any corporation, company, or public body, municipal, commercial, or otherwise, or in any share, debenture, benefit, right, or

claim whatsoever in, to, or upon the funds of any industrial, provident, friendly, benefit, building, or loan society, shall have been made by a married woman by means of moneys of her husband, without his consent, the court may, upon an application under section seventeen of this Act, order such investment, and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband; and nothing in this Act contained shall give validity as against creditors of the husband to any gift, by a husband to his wife, of any property, which, after such gift, shall continue to be in the order and disposition or reputed ownership of the husband, or to any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors; but any moneys so deposited or invested may be followed as if this Act had not passed—see pp. xxviii, 47.

11. A married woman may by virtue of the power of making contracts hereinbefore contained effect a policy upon her own life or the life of her husband for her separate use; and the same and all benefit thereof shall enure accordingly.

A policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts: Provided,

APPENDIX.
Sect. 10.

Moneys payable under policy of assurance not to form part of estate of the insured.

ENDIX that if it shall be proved that the policy was effected
Sect. 11. and the premiums paid with intent to defraud the
creditors of the insured, they shall be entitled to receive,
out of the moneys payable under the policy, a sum
equal to the premiums so paid. The insured may by
the policy, or by any memorandum under his or her
hand, appoint a trustee or trustees of the moneys pay-
able under the policy, and from time to time appoint a
new trustee or new trustees thereof, and may make
provision for the appointment of a new trustee or new
trustees thereof, and for the investment of the moneys
payable under any such policy. In default of any
such appointment of a trustee, such policy, immediately
on its being effected, shall vest in the insured and his
or her legal personal representatives, in trust for the
purposes aforesaid. If, at the time of the death of the
insured, or at any time afterwards, there shall be no
trustee, or it shall be expedient to appoint a new trustee
or new trustees, a trustee or trustees or a new trustee
or new trustees may be appointed by any court having
13 & 14 jurisdiction under the provisions of the Trustee Act,
Vict. c. 60. 1850, or the Acts amending and extending the same.
The receipt of a trustee or trustees duly appointed, or,
in default of any such appointment, or in default of
notice to the insurance office, the receipt of the legal
personal representative of the insured shall be a dis-
charge to the office for the sum secured by the policy, or
for the value thereof, in whole or in part—*see* pp. xxix, 53.

12. Every woman, whether married before or after
this Act, shall have in her own name against all persons
whomsoever, including her husband, the same civil
remedies, and also (subject, as regards her husband, to
the proviso hereinafter contained) the same remedies
Remedies of married woman for protection and security of

and redress by way of criminal proceedings, for the protection and security of her own separate property, as if such property belonged to her as a *feme sole*, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort. In any indictment or other proceeding under this section it shall be sufficient to allege such property to be her property; and in any proceeding under this section a husband or wife shall be competent to give evidence against each other, any statute or rule of law to the contrary notwithstanding: Provided always, that no criminal proceeding shall be taken by any wife against her husband by virtue of this Act while they are living together, as to or concerning any property claimed by her, nor while they are living apart, as to or concerning any act done by the husband while they were living together, concerning property claimed by the wife, unless such property shall have been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife—*see pp. xxv, xxix, 58.*

13. A woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted, and all contracts entered into or wrongs committed by her before her marriage, including any sums for which she may be liable as a contributory, either before or after she has been placed on the list of contributories, under and by virtue of the Acts relating to joint stock companies; and she may be sued for any such debt and for any liability in damages or otherwise under any such contract, or in respect of any such wrong; and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her separate property; and, as between

APPENDIX

Sect. 12.

separate
property.

Wife's
ante-
nuptial
debts and
liabilities.

APPENDIX her and her husband, unless there be any contract
Sect. 13. between them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts, or wrongs, and for all damages or costs recovered in respect thereof: Provided always, that nothing in this Act shall operate to increase or diminish the liability of any woman married before the commencement of this Act for any such debt, contract, or wrong, as aforesaid, except as to any separate property to which she may become entitled by virtue of this Act, and to which she would not have been entitled for her separate use under the Acts hereby repealed or otherwise, if this Act had not passed—*see* pp. xxv, xxix, 64.

Husband **14.** A husband shall be liable for the debts of his
to be liable wife contracted, and for all contracts entered into and
for his wrongs committed by her, before marriage, including
wife's any liabilities to which she may be so subject under the
debts con- Acts relating to joint stock companies as aforesaid, to
tracted the extent of all property whatsoever belonging to his
before wife which he shall have acquired or become entitled to
marriage from or through his wife, after deducting therefrom
to a certain any payments made by him, and any sums for which
extent. judgment may have been *bonâ fide* recovered against
 him in any proceeding at law, in respect of any such debts, contracts, or wrongs for or in respect of which his wife was liable before her marriage as aforesaid; but he shall not be liable for the same any further or otherwise; and any court in which a husband shall be sued for any such debt shall have power to direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount, or value of such property: Provided always, that nothing in this Act contained shall operate to increase or

diminish the liability of any husband married before the commencement of this Act for or in respect of any such debt or other liability of his wife as aforesaid—
see pp. xxix, 70.

15. A husband and wife may be jointly sued in respect of any such debt or other liability (whether by contract or for any wrong) contracted or incurred by the wife before marriage as aforesaid, if the plaintiff in the action shall seek to establish his claim, either wholly or in part, against both of them; and if in any such action, or in any action brought in respect of any such debt or liability against the husband alone, it is not found that the husband is liable in respect of any property of the wife so acquired by him or to which he shall have become so entitled as aforesaid, he shall have judgment for his costs of defence, whatever may be the result of the action against the wife if jointly sued with him; and in any such action against husband and wife jointly, if it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband personally and against the wife as to her separate property; and as to the residue, if any, of such debt and damages, the judgment shall be a separate judgment against the wife as to her separate property only—*see* pp. xxix, 73.

16. A wife doing any act with respect to any property of her husband, which, if done by the husband with respect to property of the wife, would make the husband liable to criminal proceedings by the wife under this Act, shall in like manner be liable to criminal proceedings by her husband—*see* pp. xxix, 77.

APPENDIX
Sect. 14.

Suits for
ante-
nuptial
liabilities.

Act of wife
liable to
criminal
proceed-
ings.

APPENDIX **17.** In any question between husband and wife as to the title to or possession of property, either party, or any such bank, corporation, company, public body, or society as aforesaid in whose books any stocks, funds, or shares of either party are standing, may apply by summons or otherwise in a summary way to any judge of the High Court of Justice in England or in Ireland, according as such property is in England or Ireland, or (at the option of the applicant irrespectively of the value of the property in dispute) in England to the judge of the county court of the district, or in Ireland to the chairman of the civil bill court of the division in which either party resides, and the judge of the High Court of Justice or of the county court, or the chairman of the civil bill court (as the case may be) may make such order with respect to the property in dispute, and as to costs of and consequent on the application as he thinks fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he shall think fit: Provided always, that any order of a judge of the High Court of Justice to be made under the provisions of this section shall be subject to appeal in the same way as an order made by the same judge in a suit pending or on an equitable plaint in the said court would be: and any order of a county or civil bill court under the provisions of this section shall be subject to appeal in the same way as any other order made by the same court would be, and all proceedings in a county court or civil bill court under this section in which, by reason of the value of the property in dispute, such court would not have had jurisdiction if this Act or the Married Women's Property Act, 1870,

Sect. 17.
Questions
between
husband
and wife
as to pro-
perty to be
decided in
a summary
way.

had not passed, may, at the option of the defendant or respondent to such proceedings, be removed as of right into the High Court of Justice in England or Ireland (as the case may be), by writ of *certiorari* or otherwise as may be prescribed by any rule of such High Court; but any order made or act done in the course of such proceedings prior to such removal shall be valid, unless order shall be made to the contrary by such High Court: Provided also, that the judge of the High Court of Justice or of the county court, or the chairman of the civil bill court, if either party so require, may hear any such application in his private room: Provided also, that any such bank, corporation, company, public body, or society as aforesaid, shall, in the matter of any such application for the purposes of costs or otherwise, be treated as a stakeholder only—see pp. xxx, 79.

APPENDIX
Sect. 17.

18. A married woman who is an executrix or administratrix alone or jointly with any other person or persons of the estate of any deceased person, or a trustee alone or jointly as aforesaid of property subject to any trust, may sue or be sued, and may transfer or join in transferring any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society in that character, without her husband, as if she were a *feme sole*—see pp. xxxi, 84.

Married woman as an executrix or trustee.

19. Nothing in this Act contained shall interfere with or affect any settlement or agreement for a settle-

Saving of existing settle-

APPENDIX ment made or to be made, whether before or after
Sect. 19. marriage, respecting the property of any married
 ments, and woman, or shall interfere with or render inoperative
 the power any restriction against anticipation at present attached
 to make or to be hereafter attached to the enjoyment of any
 future set- property or income by a woman under any settlement,
 tlements. agreement for a settlement, will, or other instrument;
 but no restriction against anticipation contained in any
 settlement or agreement for a settlement of a woman's
 own property to be made or entered into by herself
 shall have any validity against debts contracted by her
 before marriage, and no settlement or agreement for a
 settlement shall have any greater force or validity
 against creditors of such woman than a like settlement
 or agreement for a settlement made or entered into by
 a man would have against his creditors—*see* pp. xxxi,
 9, 85.

Married **20.** Where in England the husband of any woman
 woman to having separate property becomes chargeable to any
 be liable to union or parish, the justices having jurisdiction in such
 the parish union or parish may, in petty sessions assembled, upon
 for the application of the guardians of the poor, issue a sum-
 mainten- mons against the wife, and make and enforce such
 ance of her husband. order against her for the maintenance of her husband
 husband. out of such separate property as by the thirty-third
 section of the Poor Law Amendment Act, 1868, they
 may now make and enforce against a husband for the
 maintenance of his wife if she becomes chargeable to
 any union or parish. Where in Ireland relief is given
 under the provisions of the Acts relating to the relief of
 the destitute poor to the husband of any woman having
 separate property, the cost price of such relief is hereby
 declared to be a loan from the guardians of the union

31 & 32
 Vict.c.122.

in which the same shall be given, and shall be recover-
able from such woman as if she were a *feme sole* by the
same actions and proceedings as money lent—*see* p. 90.

APPENDIX
Sect. 20.

21. A married woman having separate property shall be subject to all such liability for the maintenance of her children and grandchildren as the husband is now by law subject to for the maintenance of her children and grandchildren: Provided always, that nothing in this Act shall relieve her husband from any liability imposed upon him by law to maintain her children or grandchildren—*see* pp. xxx, 93.

Married woman to be liable to the parish for the maintenance of her children.

22. The Married Women's Property Act, 1870, and the Married Women's Property Act, 1870, Amendment Act, 1874, are hereby repealed: Provided that such repeal shall not affect [any act done or right acquired while either of such Acts was in force, or any right or liability of any husband or wife, married before the commencement of this Act, to sue or be sued under the provisions of the said repealed Acts or either of them, for or in respect of any debt, contract, wrong, or other matter or thing whatsoever, for or in respect of which any such right or liability shall have accrued to or against such husband or wife before the commencement of this Act—*see* pp. xxx, xxxi, 94.

Repeal of 33 & 34 Vict. c. 93. 37 & 38 Vict. c. 50.

23. For the purposes of this Act the legal personal representative of any married woman shall in respect of her separate estate have the same rights and liabilities and be subject to the same jurisdiction as she would be if she were living—*see* pp. xxxi, 95.

Legal representative of married woman.

24. The word "contract" in this Act shall include the acceptance of any trust, or of the office of executrix

Interpretation of terms.

APPENDIX or administratrix, and the provisions of this Act as to

- . **Sect. 24.** liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by any married woman being a trustee or executrix or administratrix either before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration. The word "property" in this Act includes a thing in action—*see* pp. xxxi, 96.

Com-
mence-
ment of
Act.

- 25.** The date of the commencement of this Act shall be the first of January one thousand eight hundred and eighty-three—*see* p. 98.

Extent of
Act.

- 26.** This Act shall not extend to Scotland—*see* p. 98.

Short title.

- 27.** This Act may be cited as the "Married Women's Property Act, 1882"—*see* p. 98.
-

33 & 34 VICT. CAP. 93.

APPENDIX

An Act to amend the Law relating to the Property of Married Women. Sect. 1.
[9th August 1870.]

WHEREAS it is desirable to amend the law of property and contract with respect to married women :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. The wages and earnings of any married woman acquired or gained by her after the passing of this Act in any employment, occupation, or trade in which she is engaged or which she carries on separately from her husband, and also any money, or property so acquired by her through the exercise of any literary, artistic, or scientific skill, and all investments of such wages, earnings, money, or property, shall be deemed and be taken to be property held and settled to her separate use, independent of any husband to whom she may be married, and her receipts alone shall be a good discharge for such wages, earnings, money, and property —see pp. xxi, 28, 30.

Earnings of married women to be deemed their own property.

2. Notwithstanding any provision to the contrary in the Act of the tenth year of George the Fourth, chapter twenty-four, enabling the Commissioners for the Reduction of the National Debt to grant life annuities and annuities for terms of years, or in the Acts relating to savings banks and post office savings banks, any deposit hereafter made and any annuity granted by the said Com-

Deposits in savings banks by a married woman to be deemed her separate property.

APPENDIX missionaries under any of the said Acts in the name of a

Sect. 2. married woman, or in the name of a woman who may marry after such deposit or grant, shall be deemed to be the separate property of such woman, and the same shall be accounted for and paid to her as if she were

Proviso. an unmarried woman ; provided that if any such deposit is made by, or such annuity granted to, a married woman by means of moneys of her husband without his consent, the court may, upon an application under section nine of this Act, order such deposit or annuity or any part thereof to be paid to the husband—*see* pp. xxvii, 40, 41.

As to a married woman's property in the funds.

3. Any married woman, or any woman about to be married, may apply to the Governor and Company of the Bank of England, or to the Governor and Company of the Bank of Ireland, by a form to be provided by the governor of each of the said banks and company for that purpose, that any sum forming part of the public stocks and funds, and not being less than twenty pounds, to which the woman so applying is entitled, or which she is about to acquire, may be transferred to or made to stand in the books of the governor and company to whom such application is made in the name or intended name of the woman as a married woman entitled to her separate use, and on such sum being entered in the books of the said governor and company accordingly the same shall be deemed to be the separate property of such woman, and shall be transferred and the dividends paid as if she were an unmarried woman ; provided that if any such investment in the funds is made by a married woman by means of moneys of her husband without his consent, the court may, upon an application under section nine

of this Act, order such investment and the dividends thereof, or any part thereof, to be transferred and paid to the husband—*see* pp. xxvii, 42. APPENDIX
Sect. 3.

4. Any married woman, or any woman about to be married, may apply in writing to the directors or managers of any incorporated or joint stock company that any fully paid up shares, or any debenture or debenture stock, or any stock, of such company, to the holding of which no liability is attached, and to which the woman so applying is entitled, may be registered in the books of the said company in the name or intended name of the woman as a married woman entitled to her separate use, and it shall be the duty of such directors or managers to register such shares or stock accordingly, and the same upon being so registered shall be deemed to be the separate property of such woman, and shall be transferred and the dividends and profits paid as if she were an unmarried woman; provided that if any such investment as last mentioned is made by a married woman by means of moneys of her husband without his consent, the court may, upon an application under section nine of this Act, order such investment and the dividends and profits thereon, or any part thereof, to be transferred and paid to the husband—*see* pp. xxvii, 40, 41, 42. As to a
married
woman's
property in
a joint
stock com-
pany.

5. Any married woman, or any woman about to be married, may apply in writing to the committee of management of any industrial and provident society, or to the trustees of any friendly society, benefit building society, or loan society, duly registered, certified, or enrolled under the Acts relating to such societies respectively, that any share, benefit, debenture, right or As to a
married
woman's
property in
a society.

APPENDIX claim whatsoever in, to, or upon the funds of such
 Sect. 5. society, to the holding of which share, benefit, or debenture no liability is attached, and to which the woman so applying is entitled, may be entered in the books of the society in the name or intended name of the woman as a married woman entitled to her separate use, and it shall be the duty of such committee or trustees to cause the same to be so entered, and thereupon such share, benefit, debenture, or right, or claim, shall be deemed to be the separate property of such woman, and shall be transferable and payable with all dividends and profits thereon as if she were an unmarried woman; provided that if any such share, benefit, debenture, right, or claim has been obtained by a married woman by means of moneys of her husband without his consent, the court may, upon an application under section nine of this Act, order the same and the dividends and profits thereon, or any part thereof, to be transferred and paid to the husband—*see pp. xxvii, 40, 41.*

Deposits of 6. Nothing hereinbefore contained in reference to moneys deposited in or annuities granted by savings banks or moneys invested in the funds or in shares or stock of any company shall as against creditors of the husband give validity to any deposit or investment of moneys of the husband made in fraud of such creditors, and any moneys so deposited or invested may be followed as if this Act had not passed—*see pp. xxvii, 41.*

Personal 7. Where any woman married after the passing of property this Act shall during her marriage become entitled to not exceed- any personal property as next of kin or one of the next £200 of kin of an intestate, or to any sum of money not coming to a married exceeding two hundred pounds under any deed or will, woman to be her own. such property shall, subject and without prejudice to

the trusts of any settlement affecting the same, belong to the woman for her separate use, and her receipts alone shall be a good discharge for the same—*see* pp. xxii, xxiv, 28, 41.

APPENDIX
SECT. 7.

8. Where any freehold, copyhold, or customary hold property shall descend upon any woman married after the passing of this Act as heiress or co-heiress of an intestate, the rents and profits of such property shall, subject and without prejudice to the trusts of any settlement affecting the same, belong to such woman for her separate use, and her receipts alone shall be a good discharge for the same—*see* pp. xxii, xxiv, 28.

Freehold property coming to a married woman, rents and profits only to be her own.

9. In any question between husband and wife as to property declared by this Act to be the separate property of the wife, either party may apply by summons or motion in a summary way either to the Court of Chancery in England or Ireland according as such property is in England or Ireland, or in England (irrespective of the value of the property) the judge of the county court of the district in which either party resides, and thereupon the judge may make such order, direct such inquiry, and award such costs, as he shall think fit; provided that any order made by such judge shall be subject to appeal in the same manner as the order of the same judge made in a pending suit or on an equitable plaint would have been, and the judge may, if either party so require, hear the application in his private room—*see* pp. xxx, 81.

How questions as to ownership of property to be settled.

10. A married woman may effect a policy of insurance upon her own life or the life of her husband for her separate use, and the same and all benefit thereof, if expressed on the face of it to be so effected, shall

Married woman may effect policy of insurance.

APPENDIX enure accordingly, and the contract in such policy shall
 Sect. 10. be as valid as if made with an unmarried woman—*see*
 p. 55.

As to in-
 surance of
 a husband
 for benefit
 of his wife.

A policy of insurance effected by any married man on his own life, and expressed upon the face of it to be for the benefit of his wife or of his wife and children, or any of them, shall enure and be deemed a trust for the benefit of his wife for her separate use, and of his children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband or to his creditors, or form part of his estate. When the sum secured by the policy becomes payable, or at any time previously, a trustee thereof may be appointed by the Court of Chancery in England or in Ireland according as the policy of insurance was effected in England or in Ireland, or in England by the judge of the county court of the district, or in Ireland by the chairman of the civil bill court of the division of the county, in which the insurance office is situated, and the receipt of such trustee shall be a good discharge to the office. If it shall be proved that the policy was effected and premiums paid by the husband with intent to defraud his creditors, they shall be entitled to receive out of the sum secured an amount equal to the premiums so paid—*see* p. xxviii.

Married
 women
 may main-
 tain an
 action.

11. A married woman may maintain an action in her own name for the recovery of any wages, earnings, money, and property by this Act declared to be her separate property, or of any property belonging to her before marriage, and which her husband shall, by writing under his hand, have agreed with her shall belong to her after marriage as her separate property.

and she shall have in her own name the same remedies, both civil and criminal, against all persons whomsoever for the protection and security of such wages, earnings, money, and property, and of any chattels, or other property purchased or obtained by means thereof for her own use, as if such wages, earnings, moneys, chattels, and property belonged to her as an unmarried woman; and in any indictment or other proceeding it shall be sufficient to allege such wages, earnings, money, chattels, and property to be her property.

APPENDIX
Sect. 11.

12. A husband shall not, by reason of any marriage which shall take place after this Act has come into operation, be liable for the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and any property belonging to her for her separate use shall be liable to satisfy, such debts as if she had continued unmarried—*see* pp. 13, 25, 65, 66, 69, 73, 89.

Husband
not to be
liable on
his wife's
contracts
before
marriage.

13. Where in England the husband of any woman having separate property becomes chargeable to any union or parish, the justices having jurisdiction in such union or parish may, in petty sessions assembled, upon application of the guardians of the poor, issue a summons against the wife, and make and enforce such order against her for the maintenance of her husband as by the thirty-third section of "The Poor Law Amendment Act, 1868," they may now make and enforce against a husband for the maintenance of his wife who becomes chargeable to any union or parish. Where in Ireland relief is given under the provisions of the Acts relating to the relief of the destitute poor to the husband of any woman having separate pro-

Married
woman to
be liable to
the parish
for the
mainten-
ance of
her hus-
band.

APPENDIX Sect. 13. perty, the cost price of such relief is hereby declared to be a loan from the guardians of the union in which the same shall be given, and shall be recoverable from such woman as if she were a *feme sole* by such and the same actions and proceedings as money lent.

Married woman to be liable to the parish for the maintenance of her children. 14. A married woman having separate property shall be subject to all such liability for the maintenance of her children as a widow is now by law subject to for the maintenance of her children: Provided always, that nothing in this Act shall relieve her husband from any liability at present imposed upon him by law to maintain her children—*se* p. 93.

Commencement of Act. 15. This Act shall come into operation at the time of the passing of this Act.

Act not to extend to Scotland. 16. This Act shall not extend to Scotland.

Short title. 17. This Act may be cited as the "Married Women's Property Act, 1870."

37 & 38 VICT. CAP. 50.

APPENDIX

An Act to amend the Married Women's Property Act,
(1870.) [30th July, 1874.]

Sect. 1.

(See pp. xxv, 66, 69, 71, 72, 73, 75.)

WHEREAS it is not just that the property which a woman has at the time of her marriage should pass to her husband, and that he should not be liable for her debts contracted before marriage, and the law as to the recovery of such debts requires amendment :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows :

1. So much of the Married Women's Property Act, 1870, as enacts that a husband shall not be liable for the debts of his wife contracted before marriage is repealed so far as respects marriages which shall take place after the passing of this Act, and a husband and wife married after the passing of this Act may be jointly sued for any such debt. Husband and wife may be jointly sued for her debts before marriage.

2. The husband shall, in such action and in any action brought for damages sustained by reason of any tort committed by the wife before marriage or by reason of the breach of any contract made by the wife before marriage, be liable for the debt or damages respectively to the extent only of the assets hereinafter specified ; and in addition to any other plea or pleas may plead Extent to which husband liable.

APPENDIX that he is not liable to pay the debt or damages in respect of any such assets as hereinafter specified ; or, confessing his liability to some amount, that he is not liable beyond what he so confesses ; and if no such plea is pleaded the husband shall be deemed to have confessed his liability so far as assets are concerned.

Sect. 2.

If husband without assets he shall have judgment for costs.

3. If it is not found in such action that the husband is liable in respect of any such assets, he shall have judgment for his costs of defence, whatever the result of the action may be against the wife.

Joint and separate judgment against husband and wife for debt.

4. When a husband and wife are sued jointly, if by confession or otherwise it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband and wife, and as to the residue, if any, of such debt or damages, the judgment shall be a separate judgment against the wife.

Assets for which husband liable.

5. The assets in respect of and to the extent of which the husband shall in any such action be liable are as follows :

- (1.) The value of the personal estate in possession of the wife which shall have vested in the husband :
- (2.) The value of the choses in action of the wife which the husband shall have reduced into possession, or which with reasonable diligence he might have reduced into possession :
- (3.) The value of the chattels real of the wife which shall have vested in the husband and wife :

- (4.) The value of the rents and profits of the real estate of the wife which the husband shall have received, or with reasonable diligence might have received : APPENDIX
Sect. 5.
- (5.) The value of the husband's estate or interest in any property real or personal, which the wife in contemplation of her marriage with him shall have transferred to him or to any other person :
- (6.) The value of any property, real or personal, which the wife in contemplation of her marriage with the husband shall with his consent have transferred to any person with the view of defeating or delaying her existing creditors :

Provided that when the husband after marriage pays any debt of his wife or has a judgment *bond fide* recovered against him in any such action as is in this Act mentioned, then to the extent of such payment or judgment the husband shall not in any subsequent action be liable.

6. This Act shall not extend to Scotland.

Extent of
Act.

7. This Act may be cited as the "Married Women's Property Act (1870) Amendment Act, 1874."

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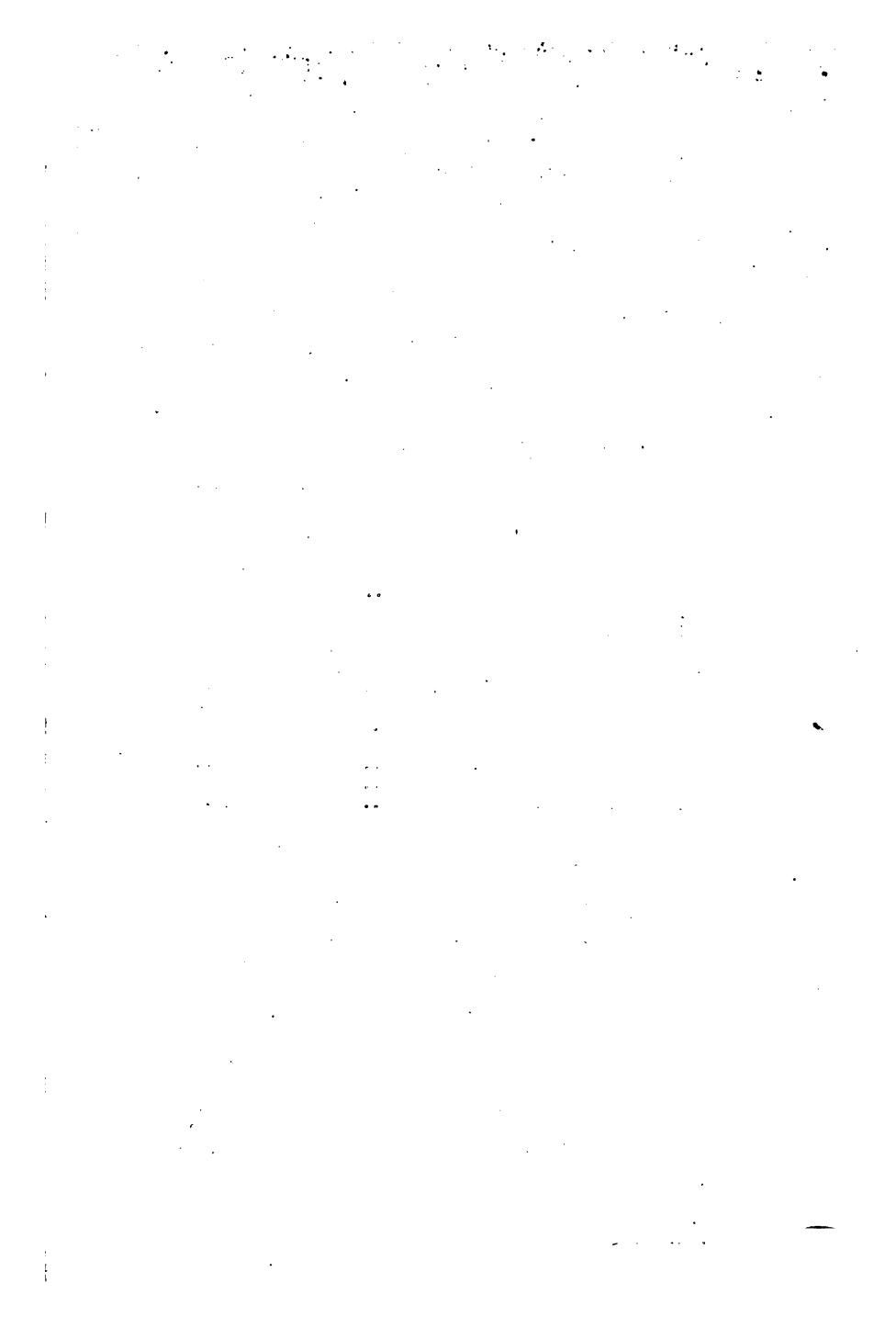
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